

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/1. INTRODUCTION/501. Scope of title.

OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)

1. INTRODUCTION

501. Scope of title.

This title is concerned with open spaces¹ (not necessarily in the open countryside²) to which the public have rights of access for recreational purposes³, and with nature conservation and biodiversity⁴. Open spaces to which the public have rights of access for other purposes, for example commons⁵, highways⁶, market places⁷, street playgrounds⁸, the sea⁹, the foreshore¹⁰, rivers and certain inland lakes¹¹, and open spaces devoted to purposes inconsistent with building operations, such as burial grounds¹², are dealt with elsewhere in this work, as is much of the law relating to the countryside¹³. Offences relating to litter¹⁴, vagrancy¹⁵, and loitering or soliciting in public places¹⁶ are also dealt with elsewhere in this work.

1 'Open space' in this title generally means any open space upon which building is restricted or prohibited: see further PARA 504. It may include land in private ownership as well as public open space. As to private landowners see PARA 514.

2 Eg town or village greens (see PARA 532 et seq) or town gardens (see PARA 545 et seq). Note that national parks and areas of outstanding natural beauty include towns and villages as well as open countryside. As to national parks see PARA 636 et seq; and as to areas of outstanding natural beauty see PARA 658 et seq.

3 As to rights of access see PARAS 513, 578 et seq.

4 As to nature conservation and biodiversity see PARAS 512, 636 et seq.

5 See **COMMONS**. Members of the public have rights of access to certain commons for purposes of air and exercise under the Law of Property Act 1925 s 193: see **COMMONS** vol 13 (2009) PARA 581.

6 See **HIGHWAYS, STREETS AND BRIDGES**.

7 See **MARKETS, FAIRS AND STREET TRADING**.

8 See **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 572.

9 See **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 789 et seq; **SHIPPING AND MARITIME LAW; WATER AND WATERWAYS**.

10 See **CROWN PROPERTY; WATER AND WATERWAYS**.

11 See **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 789 et seq; **WATER AND WATERWAYS**.

12 See **CREMATION AND BURIAL** vol 10 (Reissue) PARA 901 et seq. See also the John F Kennedy Memorial Act 1964 whereby land at Runnymede is vested in the United States of America to be preserved in perpetuity in memory of the late president for the use and enjoyment of the public under the control and management of the trustees of the Kennedy Memorial Fund.

13 See eg **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH; TOWN AND COUNTRY PLANNING; WATER AND WATERWAYS**. See also **AGRICULTURAL LAND; FORESTRY**.

14 See eg the Environmental Protection Act 1990 s 87; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 721. As to litter generally see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 717 et seq.

15 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 833-836.

16 As to offences of loitering or soliciting by common prostitutes in public places see the Street Offences Act 1959 s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 224-225. As to offences of kerb-crawling or persistent soliciting of women by men for the purposes of prostitution see the Sexual Offences Act 1985 ss 1, 2; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 227.

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502. Sources of law relating to open spaces and the countryside.

The law as to open spaces is largely statutory¹, with some custom² and a small element of common law. Although the law relating to nature conservation is mainly domestic legislation, much of it has been initiated by European Union or international legislation³ and must be interpreted according to principles derived from jurisdictions beyond the United Kingdom. The pattern for new provisions relating to public access or nature conservation has been to introduce a series of self-contained codes⁴, and there are few general principles to be applied.

1 See eg the Open Spaces Act 1906, the National Parks and Access to the Countryside Act 1949, the Countryside Act 1968, the Wildlife and Countryside Act 1981, the Countryside and Rights of Way Act 2000, and the Natural Environment and Rural Communities Act 2006.

2 Eg in relation to town and village greens: see PARA 532 et seq.

3 See eg PARAS 512, 667, 716 et seq, 728 et seq.

4 An exception is the Marine and Coastal Access Act 2009, which builds on earlier Acts and introduces new provisions by supplementing existing ones: see PARAS 628-630.

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503. Nature of countryside law, and relation between public controls and private interests.

In the past the main importance of the countryside has been as a place for agriculture and forestry, but as a result of economic and social changes farming and timber production now account for a very small proportion of the gross domestic product and of employment¹. As well as being a place where people live and work, the countryside is now valued for recreation, environmental conservation and natural beauty. The need for recreation has led to the provision of open spaces, primarily by public authorities but also by charities and private landowners, in both towns and the countryside. The increasing need for open-air leisure facilities and, at the same time, for the protection of the countryside from encroachment has led to the passing of a number of Acts with the aim of conserving and allowing access to open spaces and buildings of interest² and reconciling the public's needs with those of, for example, agriculture and forestry³. Various bodies have been set up in order to pursue these aims, with regard either to particular localities⁴ or to particular types of terrain or structure⁵.

In general these aims are achieved by grafting public rights onto existing private landownership. Although there are a variety of powers of acquisition both by agreement and by compulsion⁶, and much land is in public ownership, public access is often over land the freehold of which still belongs to private landowners⁷. Likewise, most nature conservation operates by controlling activities carried out by private occupiers either by prohibiting undesirable activities or by requiring the performance of desirable ones. Where the landowner is unknown, a local authority may be given powers of management or the land may be vested in it but that is for the statutory purpose of protecting the public interest and should not be viewed as expropriation of the original owner⁸.

The basic principle is that all land is initially private⁹ and all rights of access must be authorised by local custom, statute or licence; a balance must be struck between the rights of the owner or occupier of land and the public interest¹⁰. A general right of public access for recreational purposes can only be given by statute or by licence of the owner of the land in question¹¹ and should be distinguished from a customary right of the inhabitants of a particular area to use common land for certain purposes¹², and from the common law right of the public to pass and repass along a highway¹³. This title is largely concerned with statutory powers of access and management and does not deal with covenants restricting the use of land to use as an open space¹⁴.

¹ As to agriculture see **AGRICULTURAL LAND; AGRICULTURAL PRODUCTION AND MARKETING**. As to forestry and timber production see **FORESTRY**.

² See eg the National Parks and Access to the Countryside Act 1949; and PARA 636 et seq. As to Green Belts see the Green Belt (London and Home Counties) Act 1938; PARA 699; and **TOWN AND COUNTRY PLANNING**. As to nature conservation generally see PARA 636 et seq; and as to access to the countryside see PARA 578 et seq.

³ See eg the Countryside Act 1968 s 37; and PARA 523. The Secretary of State or the Welsh Ministers may by order repeal or amend any provision in any local Act passed before the Countryside Act 1968 (which received Royal Assent on 3 July 1968) and relating to any local authority where it appears that the provision is inconsistent with, or has become unnecessary in consequence of, any provision of the Countryside Act 1968: s 44(1). Before making such an order the Secretary of State or the Welsh Ministers must consult with each local authority affected by the proposed order: s 44(2). An order made under s 44 must not repeal or amend any enactment so far as it relates to the water undertaking of a local authority; and may contain such transitional, supplemental or incidental provisions as appear to the Secretary of State or the Welsh Ministers to be

expedient: see s 44(3). As to the meaning of 'local authority' see PARA 641 note 3 (definition applied by s 49(1)). Section 44 has effect as if a national park authority were a local authority (Environment Act 1995 Sch 9 para 5; and see PARA 644); and it also has effect as if the Broads Authority were a local authority (Countryside Act 1968 s 47A(5) (added by the Norfolk and Suffolk Broads Act 1988 Sch 3 para 6)). As to national park authorities see PARA 526 et seq. As to the Broads Authority see PARA 531. As to the Secretary of State and the Welsh Ministers see PARA 519.

4 Eg the National Trust (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 979 et seq) and the Broads Authority (see PARA 531; and **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq).

5 Eg Natural England (see PARA 523) and the Countryside Council for Wales (see PARA 524).

6 As to acquisition by agreement see eg PARAS 634, 637. As to compulsory acquisition see generally PARA 668; and see also eg PARAS 633-634, 690, 734.

7 See PARA 514.

8 See eg PARAS 538, 546, 556. See also PARA 569 et seq. If the statutory provisions were to be construed as expropriation without compensation, that could be a breach of the landowner's human rights: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 165.

9 As to private property rights in relation to highway land see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 216 et seq.

10 See eg PARAS 674 note 2, 628.

11 See PARA 578 et seq. At common law a right to roam cannot arise by prescription: see *Re Ellenborough Park*, *Re Davies, Powell v Maddison* [1956] Ch 131, [1955] 3 All ER 667, CA; and see also *Dyce v Lady Hay* (1852) 1 Macq 305, HL (there cannot be a prescriptive right if it would preclude the ordinary use of his property by the landowner). Nor can an individual dedicate a right to roam to the public at large (*A-G v Antrobus* [1905] 2 Ch 188), although such a right may be granted as an easement for the benefit of the owners or occupiers of a defined property or set of properties (*Re Ellenborough Park*, *Re Davies, Powell v Maddison* [1956] Ch 131, [1955] 3 All ER 667, CA). As to customary rights for local inhabitants over town or village greens see PARA 535. As to the jus spatiandi see PARA 505. As to the common law right to freedom of navigation see **WATER AND WATERWAYS** vol 101 (2009) PARA 688 et seq.

12 See **COMMONS** vol 13 (2009) PARA 431 et seq. As to the right of local inhabitants to use town or village greens, established by custom (class (b) greens), local Acts (class (a) greens) or 20 years' use (class (c) greens), see PARA 532 et seq.

13 See **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 197. The right to use of the highway may extend beyond the right of passage: see *Oxfordshire County Council v Oxford City Council* [2004] EWHC 12 (Ch) at [96]-[105], [2004] Ch 253 at [96]-[105], [2004] 2 WLR 1291 at [96]-[105] per Lightman J; and see also *DPP v Jones* [1999] 2 AC 240, [1999] 2 All ER 257, HL (peaceful assembly).

14 As to restrictive covenants see **EQUITY** vol 16(2) (Reissue) PARA 613 et seq. The equitable doctrine relating to restrictive covenants derives from *Tulk v Moxhay* (1848) 2 Ph 774, which established the centre of Leicester Square in London as a private open space. Restrictive covenants may be imposed by private landowners for the benefit of retained land or by certain public or charitable bodies without adjacent benefited land (eg by local authorities under the Town and Country Planning Act 1990 s 106 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 244 et seq), by the National Trust under the National Trust Act 1937 s 8 (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 994), and by the Church Commissioners under the Pastoral Measure 1983 s 62 (see **ECCLESIASTICAL LAW** vol 14 PARA 1122)). Such covenants may have the effect of preventing building on land. See also PARA 586.

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504. Open spaces generally.

The expression 'open space' is usually defined for the particular purposes of each Act in which it is used¹; but in the absence of statutory definition 'open space', as used in this title, means any open space to which the public have rights of access for the purposes of recreation².

¹ See eg the Open Spaces Act 1906 s 20, which defines 'open space' as any land, whether inclosed or not, on which there are no buildings or of which not more than one-twentieth part is covered with buildings, and the whole or the remainder of which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied. For many purposes, 'open space' is defined as any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground: see eg the Acquisition of Land Act 1981 s 19(4); the New Towns Act 1981 s 80(1); the Town and Country Planning Act 1990 s 336(1); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 531; **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 933; **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1335.

Any place of public resort or recreation ground belonging to, or under the control of, a local authority is to be deemed an open and public place under the vagrancy laws (see the Vagrancy Acts 1824 to 1935; the text and note 15; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARAS 833-836), and for the purposes of the Town Police Clauses Act 1847 ss 28, 29 (which impose a penalty in connection with ferocious dogs, furious riding and driving, offences against public order, discharge of firearms, making bonfires and throwing refuse in streets: see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 841 et seq) is deemed a street: see the Public Health Acts Amendment Act 1907 s 81 (amended by the Street Offences Act 1959 Schedule; and the Indecent Displays (Control) Act 1981 Schedule). As to the meaning of 'local authority' for these purposes see PARA 555. As to recreation grounds, public pleasure grounds, parks etc see PARA 549 et seq.

² As to public open spaces see PARA 532 et seq. Public rights of access are principally statutory rights: see PARA 578 et seq. As to rights over town or village greens see PARA 532 et seq.

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505. Jus spatiandi.

There can be no common law right in the public or customary right in the inhabitants of a particular place to stray over an open space or to remain on that space for such purposes as they may think proper, that is to say, no 'jus spatiandi vel manendi'¹, as distinct from the proper customary use of village or town greens².

The only common law right of the kind which can be claimed by the public is to pass and repass from one point to another across an open space³, and the only customary right of the kind which can be claimed by the inhabitants of a particular place is to use a green for exercise and recreation, including the playing of lawful games⁴.

Where land belongs to a charity which holds it for the purpose of recreation for the benefit of the public or for local inhabitants there may be an obligation to admit the public or such inhabitants on licence⁵.

1 *A-G v Antrobus* [1905] 2 Ch 188 at 198, 206 per Farwell J; *Eyre v New Forest Highway Board* (1892) 56 JP 517 at 519; *Re Badock's Deed of Gift, Bristol Corp'n v A-G* (1948) 64 TLR 176; *Copeland v Greenhalf* [1952] Ch 488, [1952] 1 All ER 809; *Re Ellenborough Park, Re Davies, Powell v Maddison* [1956] Ch 131, [1955] 3 All ER 667, CA. The right to use a private pleasure ground is, however, an easement known to the law: see *Re Ellenborough Park, Re Davies, Powell v Maddison* [1956] Ch 131, [1955] 3 All ER 667, CA; and **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARAS 19, 158.

2 As to village or town greens see PARA 532 et seq.

3 See **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARAS 1-2. The public right of navigation involves passage over navigable waters and is often used for purposes of recreation; and there may also be recreational rights along canals. As to the right of navigation see **WATER AND WATERWAYS** vol 101 (2009) PARA 688 et seq.

4 See PARA 535. As to customary rights over the foreshore see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 243; **WATER AND WATERWAYS** vol 100 (2009) PARA 46 et seq.

5 As to charities set up for the public enjoyment of land etc see PARA 516.

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506. Legislative and administrative authorities.

There are several authorities with functions, powers and duties relating to open spaces¹. These include: the Secretary of State², the Welsh Ministers³, Natural England⁴, the Countryside Council for Wales⁵, the Joint Nature Conservation Committee⁶, national park authorities⁷ and the Commission for Rural Communities⁸, as well as local authorities⁹.

1 As to the meaning of 'open space' see PARA 504.

2 As to the Secretary of State see PARA 519.

3 As to the Welsh Ministers see PARA 519.

4 As to Natural England see PARA 523.

5 As to the Countryside Council for Wales see PARA 524.

6 As to the Joint Nature Conservation Committee see PARA 525.

7 As to national park authorities see PARA 526 et seq.

8 As to the Commission for Rural Communities see PARA 527.

9 As to local authorities see PARA 522.

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507. Powers of compulsory purchase and appropriation.

Powers of compulsory purchase¹ include power for a local authority² or the Secretary of State or the Welsh Ministers³ to purchase compulsorily land forming part of a common, open space or fuel or field garden allotment⁴. There is also power for such authorities to appropriate land to other uses, and to dispose of land⁵.

1 As to powers of compulsory purchase generally see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 501 et seq.

2 As to the meaning of 'local authority' for these purposes see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 934.

3 As to the Secretary of State and the Welsh Ministers see PARA 519.

4 See **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 934 et seq. As to commons see **COMMONS**. As to allotments see **AGRICULTURAL LAND** vol 1 (2008) PARA 510 et seq. Note that a power to acquire or appropriate land for other purposes will not, without clear words, be construed so as to extinguish rights relating to a town or village green: see PARA 534.

5 See eg **LOCAL GOVERNMENT** vol 69 (2009) PARA 513; **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 945 et seq. As to a local authority's power to appropriate land see also *R (on the application of Beresford) v Sunderland City Council* [2003] UKHL 60, [2004] 1 AC 889, [2004] 1 All ER 160.

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508. Regulation and management of public open spaces.

Provision is made in relation to the regulation and management of public open spaces such as town and village greens¹, town gardens², recreation grounds³, public pleasure grounds⁴, and parks⁵. Provision is also made for local authorities to take over the management of certain open spaces under the Open Spaces Act 1906⁶.

1 As to town and village greens see PARA 532 et seq.

2 As to town gardens see PARA 545 et seq.

3 As to recreation grounds see PARA 549 et seq.

4 As to public pleasure grounds see PARA 555 et seq.

5 As to parks see PARA 560 et seq.

6 As to the transfer of management functions to local authorities see PARA 569 et seq.

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509. Open spaces in London.

In addition to the powers of local authorities¹ generally, the London borough councils and the Common Council of the City of London have various special powers in relation to parks and open spaces in London².

In particular, a London borough council has power to provide and maintain various facilities for public recreation in any open space³, and to organise or conduct competitions⁴. Where it appears to two councils that the functions of one of them with respect to the maintenance and management of any open space could be more conveniently exercised by the other, they may agree to a transfer of such functions but without prejudice to any trust or other restrictions or rights affecting the land⁵. In order to enlarge or improve any open space, a council also has power to exchange open space land for adjacent land⁶.

The Common Council has power to acquire open spaces⁷ within 25 miles from the City boundaries and make agreements for asserting and preserving rights over those open spaces⁸.

Certain open spaces in London are regulated in accordance with provisions contained in special Acts⁹. Of the numerous inclosed gardens in public squares and other places in London, some are held by trustees, commissioners or private owners or householders, and some by local authorities; the preservation as gardens of these inclosures is ensured by statutory provisions which restrict building¹⁰.

Special provisions apply to the royal parks¹¹, many of which are situated in London.

1 See PARA 546 et seq.

2 See eg the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 s 1, Schedule. As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 5, 29-30, 35 et seq. As to the Common Council of the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 51 et seq. As to the functions of the London borough councils and the Common Council of the City of London see further **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 59 et seq.

As to the vesting of land formerly vested in the London or Middlesex county councils, and used as a park or open space, in the Greater London Council and the subsequent transfer of the land to London borough councils or the Common Council of the City of London see the London Government Act 1963 s 58(2), (3) (repealed); and the London Authorities (Parks and Open Spaces) Order 1971, SI 1971/ 228 (lapsed). For consequential provisions as to the transfer of staff and certain additional property see the London Authorities (Parks and Open Spaces) (Staff) Order 1971, SI 1971/229; and the London Authorities (Parks and Open Spaces) (Miscellaneous Property) Order 1971, SI 1971/230. As to the abolition of the Greater London Council see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 33.

As to the Green Belt around London see the Green Belt (London and Home Counties) Act 1938; PARA 699; and **TOWN AND COUNTRY PLANNING**.

3 See the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 Schedule arts 6, 7 (Schedule art 6 amended by SI 1986/452). For these purposes, 'open space' includes any public park, heath, common, recreation ground, pleasure ground, garden, walk, ornamental enclosure or disused burial ground under the control and management of a local authority (ie a London borough council): Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 Schedule art 6 (as so amended).

A London borough council may grant licences to provide facilities and may let buildings or any part of an open space for public recreation: see Schedule art 8. Charges may be made in respect of the use or enjoyment of facilities, buildings, etc and in respect of admission to or the use of certain open space set apart or enclosed by the council: see Schedule art 10. As to the power of a council to enclose part of an open space for the purpose of or in connection with the cultivation or preservation of vegetation in the interests of public amenity or in the interests of the safety of the public see Schedule art 9. As to the exercise of powers under Schedule arts 7-10

see further Schedule art 11 (amended by the Charities Act 2006 Sch 8 para 49); and as to the restriction on the exercise of powers under the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 Schedule arts 7, 8 in relation to commons see Schedule art 12 (amended by the Commons Act 2006 Sch 4 para 2, Sch 6 Pt 2). The powers conferred by these provisions are in addition to any other powers possessed by a council: see the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 Schedule art 20.

In order to secure the observance of enactments relating to open spaces under its control and management, and of byelaws and regulations, a council may appoint officers to be sworn in as constables: see Schedule art 18. As to the restriction on byelaws prohibiting military drill on any heath or common, and as to the inability of byelaws to restrict ministerial rights or powers over any park, garden or open space in any case of national danger or emergency, see the London Council (General Powers) Act 1890 s 16 (amended by SI 1965/540).

4 See the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 Schedule art 13.

5 See the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 Schedule art 14(1), (3). Such an agreement may also provide for the transfer of any estate or interest of the transferring authority in the land: see Schedule art 14(2). As to the continuation of byelaws on transfer see Schedule art 14(4). Nothing done under Schedule art 14 may derogate from the power under the Open Spaces Act 1906 s 16 (see PARA 577), nor affect the operation of the London Squares Preservation Act 1931 (see **LONDON GOVERNMENT**): Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 Schedule art 14(5).

6 See the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 Schedule art 15. As to the use of part of an open space for street improvement see Schedule art 17.

As to the power to enter into an agreement with an owner of land that, in the event of a sale of the land, it should be first offered to the council for the purpose of providing an open space or for the purposes of the Physical Training and Recreation Act 1937 (see **EDUCATION** vol 15(1) (2006 Reissue) PARA 555) see the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 Schedule art 16 (amended by SI 1986/452).

7 The town and village greens, wastes of forests or manors and all commons or other land within the Inclosure Act 1845 s 11 (see **COMMONS** vol 13 (2009) PARA 419): Corporation of London (Open Spaces) Act 1878 s 2.

8 Corporation of London (Open Spaces) Act 1878 s 4. As to the power of the Common Council of the City of London to manage and maintain such open spaces as places of public resort see s 18. As to the powers of the Common Council in relation to open spaces see also eg the City of London (Various Powers) Act 1933 s 4. As to Epping Forest see the Corporation of London (Open Spaces) Act 1878 ss 2, 22; the Epping Forest Act 1878; and the City of London (Various Powers) Act 1977 s 8(1). As to rights of common claimed over Epping Forest see *Willingale v Maitland* (1866) LR 3 Eq 103; *Chilton v London Corp*n (1878) 7 ChD 562.

9 These open spaces were formerly under the control of the Greater London Council but are now under the control of the London borough councils. See eg the Metropolitan Board of Works (Various Powers) Act 1887 and the Local Law (Greater London Council and Inner London Boroughs) Order 1965, SI 1965/540 (Wandsworth Common, Bostall Heath, Brook Green and Ravenscourt Park); and the Paddington Recreation Ground Act 1893 (Paddington Green). Most of the Acts of this nature incorporated the powers of control and management contained in Acts of general application, such as the Open Spaces Act 1906.

10 See the London Squares Preservation Act 1931; and **LONDON GOVERNMENT**.

11 See eg PARA 565. As to the royal parks generally see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 367.

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510. Crown land.

Crown land, such as royal parks¹ or the foreshore², may be open to the public³. A national park⁴ may include Crown land⁵, and Crown land may be subject to a nature reserve agreement⁶.

1 As to royal parks see PARA 565; and **CROWN PROPERTY** vol 12(1) (Reissue) PARA 367.

2 As to the foreshore see PARA 511; and **CROWN PROPERTY** vol 12(1) (Reissue) PARA 242 et seq; **WATER AND WATERWAYS** vol 100 (2009) PARA 34 et seq.

3 See eg the Crown Estate Act 1961 s 6; and **CROWN PROPERTY** vol 12(1) (Reissue) PARA 295. As to Crown land generally see **CROWN PROPERTY**.

4 As to national parks see PARA 636 et seq.

5 See PARA 639.

6 See PARA 762.

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511. Foreshore.

The public may have access to the foreshore¹, much of which is Crown land². Current practice of the Crown Estate Commissioners³ is to grant leases of stretches of the foreshore, generally to local authorities or to charitable bodies such as the National Trust⁴; such leases may confer rights and obligations to supervise the area, control pollution, and grant licences for leisure activities and beach trading. Although there is no public highway along the foreshore⁵, and no general right for the public to access or use the foreshore for recreation, in most places the use of the foreshore for the purposes of recreation and bathing is tolerated⁶.

1 As to the foreshore see **WATER AND WATERWAYS** vol 100 (2009) PARA 34 et seq.

2 See PARA 510; and **CROWN PROPERTY** vol 12(1) (Reissue) PARA 242 et seq.

3 As to the Crown Estate Commissioners see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 280 et seq.

4 As to the National Trust see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 979 et seq.

5 See *Maddock v Wallasey Local Board* (1886) 55 LJQB 267; *Alfred F Beckett Ltd v Lyons* [1967] Ch 449 at 469, [1967] 1 All ER 833 at 842, CA, per Harman LJ, and at 482 and 851 per Winn LJ; and **WATER AND WATERWAYS** vol 100 (2009) PARA 46.

6 See *Blundell v Catterall* (1821) 5 B & Ald 268; *Lord Fitzhardinge v Purcell* [1908] 2 Ch 139; *Alfred F Beckett Ltd v Lyons* [1967] Ch 449 at 469-470, [1967] 1 All ER 833 at 842-843, CA, per Harman LJ; and **WATER AND WATERWAYS** vol 100 (2009) PARA 46 et seq.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/1. INTRODUCTION/512. Conservation and biodiversity.

512. Conservation and biodiversity.

Provision is made for the conservation of natural beauty and amenity and wildlife¹, whether flora or fauna, by the establishment of protected areas such as national parks², areas of outstanding natural beauty³, nature reserves and wetlands⁴, and sites of special scientific interest⁵. Provision is also made to secure compliance with the requirements of European legislation, such as the Habitats Directive⁶. In addition, there is some international provision relating to conservation; for instance, the Ramsar Convention aims to protect wetlands of international importance⁷.

Despite being to some extent under the control of a public body, land falling within any such protected area will not necessarily be public land⁸. Agreements may be made with the landowner for the management, use and conservation of the land⁹.

Conservation is encouraged by environmental schemes and grants¹⁰, and pollution and planning law is also relevant¹¹.

1 See PARA 636 et seq. Non-statutory designations include heritage coasts, European geoparks, world heritage sites, biosphere reserves, and local geological sites.

2 As to national parks see PARA 636 et seq.

3 As to areas of outstanding natural beauty see PARA 658 et seq.

4 As to nature reserves and wetlands see PARA 663 et seq.

5 As to sites of special scientific interest see PARA 674 et seq.

6 See PARA 728 et seq. As to the Habitats Directive see PARA 728 note 3.

The European Landscape Convention (Florence, 2000, Misc 4 (2006), Cm 6794) was signed by the United Kingdom in 2006, but at the date at which this volume states the law it had not yet been implemented.

7 As to the Ramsar Convention see PARA 667.

8 See also PARA 514.

9 As to management agreements see PARA 761 et seq. As to agreements made under the Town and Country Planning Act 1990 s 106 see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 244 et seq.

10 See PARA 758 et seq; and **AGRICULTURAL PRODUCTION AND MARKETING**.

11 Eg the requirement for environmental assessments: see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 60 et seq. See also **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 6 et seq.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/1. INTRODUCTION/513. Access to the countryside.

513. Access to the countryside.

The National Parks and Access to the Countryside Act 1949¹ and the Countryside and Rights of Way Act 2000² provide statutory rights of access to the countryside³, and the Marine and Coastal Access Act 2009 provides for coastal access⁴. Provision is also made for the compulsory acquisition of land for access⁵ and the establishment and operation of access forums⁶.

1 See the National Parks and Access to the Countryside Act 1949 Pt V (ss 59-83); and PARA 581 et seq.

2 See the Countryside and Rights of Way Act 2000 Pt I Ch I (ss 1-20); and PARA 580 et seq. As to exclusions or restrictions see Pt I Ch II (ss 21-33); and PARA 595 et seq.

3 See PARA 578 et seq. There is no common law right of access for the general public: see PARA 505.

National parks may afford opportunity for open-air recreation, but there is no general or automatic right of access to land in national parks: see PARA 636 et seq. As to public rights of way across farmland see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 786.

4 See PARA 628 et seq; and **HIGHWAYS, STREETS AND BRIDGES**.

5 See PARA 633 et seq.

6 See PARA 635.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/1. INTRODUCTION/514. Private landowners.

514. Private landowners.

The owner of land¹ cannot at common law create a general public right of access², although he may permit access on licence³ and may grant a right of access as an easement for the benefit of definable premises⁴. By statute, he may enter into agreements⁵ or dedicate land as access land⁶, giving what is sometimes referred to as a 'right to roam'⁷. A tenant for life under the Settled Land Act 1925 is empowered for the general benefit of the residents on the settled land to cause any part of the land to be appropriated and laid out for streets, roads, paths, squares, gardens or other open spaces, for the use of the public or of individuals⁸. In the nineteenth century developers often provided parks either in order to encourage purchasers or out of benevolence; whilst private initiatives for free public open spaces are now rare, they do still exist⁹.

Public rights of access are not always compatible with the interests of private landowners, who may be subject to compulsory rights, for instance where public access is given over common land¹⁰ or a town or village green¹¹. When landowners voluntarily invite the public (usually for payment) onto their land¹², they may be subject to various controls or restrictions. For example, if opening the land to the public involves a change of use, the landowner may be subject to planning controls¹³. Landowners must, of course, have regard to occupier's liability¹⁴. Private landowners may also be subject to conservation controls where the land falls within a national park¹⁵, an area of outstanding natural beauty¹⁶, a nature reserve or wetland¹⁷, or a site of special scientific interest¹⁸.

1 As to the special position of the National Trust see PARA 516 note 1; and **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 979. As to charities see PARA 516.

2 See *A-G v Antrobus* [1905] 2 Ch 188; and PARA 505.

3 See *Wood v Leadbitter* (1845) 13 M & W 838.

4 See *Re Ellenborough Park*, *Re Davies*, *Powell v Maddison* [1956] Ch 131, [1955] 3 All ER 667, CA.

5 As to access agreements see PARAS 581, 615.

6 See the Countryside and Rights of Way Act 2000 ss 1(1)(e), 16; and PARA 580 note 8. Some dedications under the Law of Property Act 1925 s 193(2) remain in operation but the power of new dedication will be removed when the prospective repeal of this provision is brought fully into force: see **COMMONS** vol 13 (2009) PARAS 580-581. In any case, s 193(2) only applies to land subject to rights of common and such rights (and therefore the land) must have been registered under the Commons Registration Act 1965 (or the rights will have been lost and the land will have lost its status) (see **COMMONS** vol 13 (2009) PARA 506 et seq), so the land will therefore be access land (unless it is excepted land) (see PARA 580). It is not possible at common law for a landowner to dedicate land to a right to roam: see PARA 503 note 11.

7 As to access to the countryside and the right to roam generally see PARA 578 et seq. There is no general legal right to enter and remain on private land even if normally open to the public free of charge: see *CIN Properties v Rawlins* (1995) 69 P & CR D36; *Anderson v United Kingdom* (1998) 25 EHRR CD 172; *Appleby v United Kingdom* (2003) 37 EHRR 783, ECtHR.

8 See the Settled Land Act 1925 s 56; and **SETTLEMENTS** vol 42 (Reissue) PARA 865. As to the phasing out of strict settlements under the Settled Land Act 1925 see the Trusts of Land and Appointment of Trustees Act 1996 s 2, Sch 1; and **REAL PROPERTY; SETTLEMENTS**.

The powers of a tenant for life apply only under the Settled Land Act 1925. Although trustees under a trust for sale were given the same powers by the Law of Property Act 1925 s 28 (repealed), no equivalent provision is conferred by the Trusts of Land and Appointment of Trustees Act 1996 for trustees of land and it must be assumed that save in relation to those very few continuing settlements under the Settled Land Act 1925 the

power has gone. Some trust deeds include wide powers but as they have to be exercised for the benefit of the trust it will be unusual for it to be a proper exercise of the trustees' discretion to benefit the public at the expense of the beneficiaries of the trust.

As to the powers of a tenant for life to dedicate land see the Forestry Act 1967 Sch 2; the Countryside and Rights of Way Act 2000 s 16; note 5; and PARA 580 note 8.

9 Eg agreements made under the Town and Country Planning Act 1990 s 106: see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 244 et seq. Some designers of new settlements voluntarily (apart from planning gain) include open spaces for the residents, but the cost of maintenance and management of such open spaces may be a problem. See eg *Orchard Trading Estate Management Ltd v Johnson Security Ltd* [2002] EWCA Civ 406, [2002] 2 EGLR 1 (use of Rentcharges Act 1977); *Halsall v Brizell* [1957] Ch 169, [1957] 1 All ER 371 (principle of benefit and burden); *Thamesmead Town Ltd v Allotey* [1998] 3 EGLR 97, CA (principle of benefit and burden). An open space may be maintainable by using commonhold under the Commonhold and Leasehold Reform Act 2002 (see **COMMONHOLD**), but this is only relevant for the occupiers of limited areas rather than the public at large.

As to the power of a private owner to convey or lease an open space see PARA 576.

10 As to common land see **COMMONS**.

11 As to town or village greens see PARA 532 et seq.

12 Eg the public may be invited into the park of a mansion house, perhaps for some special event or as part of the commercial exploitation of a private garden or park. Trustees of certain open spaces have power to admit the public on such terms as they think proper: see the Open Spaces Act 1902 s 2(1)(d); and PARA 569. Farmers may invite the public onto their land; this will be a condition for joining the Higher Level Stewardship scheme: see PARA 632. Note that opening a farm to the public or for educational purposes is not agriculture for the purposes of the Agricultural Holdings Act 1986: *Jewell v McGowan* [2002] EWCA Civ 145, [2002] 3 EGLR 87, [2002] All ER (D) 387.

13 As to planning controls see **TOWN AND COUNTRY PLANNING**.

14 As to occupiers liability see **NEGLIGENCE** vol 78 (2010) PARA 29 et seq. As to liability to the public see also PARA 585.

15 As to national parks see PARA 636 et seq.

16 As to areas of outstanding natural beauty see PARA 658 et seq.

17 As to nature reserves and wetlands see PARA 663 et seq.

18 As to sites of special scientific interest see PARA 674 et seq.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/1. INTRODUCTION/515. Water companies.

515. Water companies.

Water companies¹ own large tracts of land², and they have a duty in formulating or considering any proposals relating to their functions to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, moor, heath, down, cliff or foreshore and other places of natural beauty³.

1 As to water undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 134 et seq.

2 Note that reservoirs etc may have a large catchment area.

3 See the Water Industry Act 1991 s 3; and **WATER AND WATERWAYS** vol 101 (2009) PARA 676.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/1. INTRODUCTION/516. Charities.

516. Charities.

Charities¹ may be set up for public enjoyment of land or for conservation or both². Many recreation grounds³ in villages are established as charities, sometimes under the Recreational Charities Act 1958⁴ and often with the parish council as charity trustee⁵. Charities may own or acquire land already registered as a town or village green⁶, and if inhabitants of a locality use land belonging to a charity as of right for recreation for 20 years that may create a green⁷.

The Charity Commission⁸ has published guidance to the effect that charities which hold land for the purpose of recreation for the benefit of the public or for local inhabitants must admit the public unless there are good reasons⁹ to exclude them¹⁰.

1 Eg the National Trust, whose activities involve preservation of and public access to the countryside (of which it owns a great deal). As to the National Trust see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 103 et seq. As to the National Trust's powers of ownership see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 991; as to commons vested in the National Trust see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 992; and as to property subject to settlement see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 993. As to the special power of the National Trust to enter into agreements restrictive of the use of land which do not benefit adjacent land see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 994; and see also *Re Whiting's Application* (1988) 58 P & CR 321, Lands Tribunal.

As to charities see also eg PARAS 539, 552, 572, 574; and as to charities generally see **CHARITIES**.

2 It has been established that such gifts are charitable: see *Verrall, National Trust for Places of Historic Interest or Natural Beauty v A-G* [1916] 1 Ch 100 (conservation interest (Wicken Fen, East Anglia); landscape value (Leigh Woods, Somerset)). See also **CHARITIES** vol 8 (2010) PARA 37. As to tax exemptions for charitable gifts see PARA 517.

3 As to recreation grounds see PARA 549 et seq.

4 As to the Recreational Charities Act 1958 see **CHARITIES** vol 8 (2010) PARA 52 et seq.

5 As to trustees of charities see **CHARITIES** vol 8 (2010) PARA 328 et seq.

6 As to town or village greens see PARA 532 et seq.

7 See *R v Oxfordshire County Council, ex p Sunningwell Parish Council* [2000] 1 AC 335, [1999] 3 All ER 385, HL; and PARA 536. It would appear that where a charity established for recreational purposes for the benefit of a locality encourages use by local inhabitants, or where a national charity holds land for the public benefit for recreation, that (being in exercise of its charitable functions) might not give rise to use as of right: see *R (on the application of Beresford) v Sunderland City Council* [2003] UKHL 60, [2004] 1 AC 889, [2004] 1 All ER 160 (this case involved a local authority rather than a charity; access merely tolerated by the authority was held to give rise to a class (c) green, but it was suggested that positive encouragement would not).

8 As to the Charity Commission see **CHARITIES** vol 8 (2010) PARA 538 et seq.

9 Eg conservation of a vulnerable ecosystem.

10 See Charity Commission publication RR9 - Preservation and Conservation (2001); and Charity Commission publication RR4 - The Recreational Charities Act 1958 (2000).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/1. INTRODUCTION/517. Various statutory exemptions affecting open spaces.

517. Various statutory exemptions affecting open spaces.

To provide the means of public recreation is a charitable purpose¹, and so trusts formed for the purposes of providing such means of public recreation are entitled to the various tax exemptions accorded to charities².

An open space which has been irrevocably dedicated to the public for the purposes of recreation, and which cannot be let or used beneficially, is non-commercial and so exempt from rating and such charges as private street works expenses; but where the dedication of an open space is not irrevocable or if it can be so let or used it is not outside commercial use³.

The requirement of a licence to fell trees imposed by the Forestry Act 1967 does not apply to the felling of any trees standing or growing on land comprising a public open space⁴.

1 See **CHARITIES** vol 8 (2010) PARA 52 et seq.

2 As to the exemptions afforded to charities from income tax see **CHARITIES** vol 8 (2010) PARA 431; **INCOME TAXATION** vol 23(2) (Reissue) PARA 1172 et seq. As to the relief from inheritance tax of gifts for charitable purposes see **CHARITIES** vol 8 (2010) PARA 432; **INHERITANCE TAXATION** vol 24 (Reissue) PARA 520.

3 As to the exemption from private street works expenses see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 169. As to the exemption from rates see *Lambeth Overseers v LCC* [1897] AC 625, HL; and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 21.

4 See the Forestry Act 1967 s 9(1), (2)(b); and **FORESTRY** vol 52 (2009) PARA 121.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/1. INTRODUCTION/518. Financial provisions.

518. Financial provisions.

For the purposes of inheritance taxation, gifts for national purposes to certain bodies (such as Natural England¹, the Countryside Council for Wales² and the National Trust³) are exempt transfers⁴. Certain items, including land which in the opinion of the Treasury⁵ is of outstanding scenic or historic or scientific interest, may be designated as eligible for conditional exemption from inheritance taxation⁶.

Various grants may be given for parks and other open spaces, subject to conditions as to public access⁷; and there are numerous farming payments for conservation⁸.

Unless there is a statutory right of access⁹, landowners may charge entry fees to visitors¹⁰.

1 As to Natural England see PARA 523.

2 As to the Countryside Council for Wales see PARA 524.

3 As to the National Trust see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 979 et seq.

4 See the Inheritance Act 1984 s 25, Sch 3; and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 523. As to tax exemptions for charitable gifts see PARA 517.

5 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

6 See the Inheritance Act 1984 s 31; and **INHERITANCE TAXATION** vol 24 (Reissue) PARA 536.

7 Eg National Heritage Memorial Fund grants.

8 See PARA 758 et seq.

9 As to statutory rights of access see PARA 578 et seq.

10 A visitor who has paid an entry fee is entitled to remain for a reasonable period in order to enjoy what he has paid for: see *Hurst v Picture Theatres Ltd* [1915] 1 KB 1.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/2. LEGISLATIVE AND ADMINISTRATIVE AUTHORITIES/(1) CENTRAL AND LOCAL GOVERNMENT/519. The Secretary of State and the Welsh Ministers.

2. LEGISLATIVE AND ADMINISTRATIVE AUTHORITIES

(1) CENTRAL AND LOCAL GOVERNMENT

519. The Secretary of State and the Welsh Ministers.

Matters relating to open spaces have historically been under the jurisdiction of various government departments and, over the years, functions have been transferred from minister to minister¹. The relevant ministerial powers and functions are now exercised by the Secretary of State² or, in relation to Wales, by the Welsh Ministers³.

Ministerial functions in respect of open spaces include functions relating to national parks⁴, areas of outstanding natural beauty⁵, marine reserves and wetlands⁶, sites of special scientific interest⁷, limestone pavements⁸, hedgerows⁹, protected wildlife¹⁰ and biodiversity¹¹. There are also various functions relating to the conservation of natural habitats and of wild fauna and flora that are of Community importance¹².

The Secretary of State has power to delegate certain functions¹³, and has a wide power to give financial assistance¹⁴.

1 As to the transfer of ministerial functions generally see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 363.

2 In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. The office of Secretary of State is a unified office, and in law each Secretary of State is generally capable of performing the functions of all or any of them; accordingly, many modern statutes refer simply to the 'Secretary of State' without reference to a particular department or ministry. As to the office of Secretary of State see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355.

Older legislation often refers to a specific minister. For example, some of the legislation covered in this title refers to the Minister of Agriculture, Fisheries and Food, but the ministry has been dissolved and the minister's functions have been transferred to the Secretary of State for Environment, Food and Rural Affairs: see the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568 (amended by SI 2002/2626); and the Ministry of Agriculture, Fisheries and Food having been dissolved by the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794.

In practice, ministerial functions relating to the environment, the countryside, wildlife and conservation are now largely the responsibility of the Secretary of State for Environment, Food and Rural Affairs, whilst functions relating to planning matters, including the Green Belts, are the responsibility of the Secretary of State for Communities and Local Government. Certain environmental matters may be the responsibility of the Secretary of State for Energy and Climate Change.

3 Ministerial functions relating to open spaces, so far as exercisable in relation to Wales, are now almost exclusively the responsibility of the Welsh Ministers following the establishment of the Welsh Assembly Government under the Government of Wales Act 2006: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. Some functions have been specifically conferred on the Welsh Ministers by enactments made after the Government of Wales Act 2006 came into force; and some functions have been specifically transferred to the Welsh Ministers by Order in Council under s 58. Functions that were previously transferred to the National Assembly for Wales by Order in Council under the Government of Wales Act 1998 s 22 (repealed) (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, arts 2, 3, Sch 1) were transferred to the Welsh Ministers under the Government of Wales Act 2006 Sch 11 paras 26, 30; and functions specifically conferred on the National Assembly for Wales by enactments made subsequent to the passing of the Government of Wales Act 1998 (such as the Natural Environment and Rural Communities Act 2006) were also transferred to the Welsh Ministers under the Government of Wales Act 2006 Sch 11 para 30. For the Orders in Council made under the Government of Wales Act 2006 s 58 and the Government of Wales Act 1998 s 22 (and now having effect under

the Government of Wales Act 2006 s 58 by virtue of Sch 11 paras 26, 30) see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the exercise of the transferred functions see the Government of Wales Act 2006 Sch 3, Sch 11 paras 33-35; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the Welsh Ministers and the establishment of the Welsh Assembly Government generally see the Government of Wales Act 2006 Pt 2 (ss 45-92); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

Functions relating to open spaces that were transferred under the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 include:

- 1 (1) functions under the Open Spaces Act 1906 (see PARA 569 et seq);
- 2 (2) functions under the National Parks and Access to the Countryside Act 1949 (see PARA 578 et seq) except:
 1. (a) functions under s 65(3) (see PARA 617), s 72 (see PARA 588), s 78(1) (see PARA 626) and Sch 1 para 4 (see PARA 636); and
 2. (b) the Treasury function under s 101(11) (see PARA 639);
- 3 (3) functions under the Commons Registration Act 1965 (see PARA 532 et seq);
- 4 (4) functions under the Countryside Act 1968 (see PARA 566 et seq) except the Treasury function under s 47(4) (see PARA 566);
- 5 (5) functions under the Wildlife and Countryside Act 1981 (see PARA 636 et seq);
- 6 (6) functions under the Environmental Protection Act 1990, with certain exceptions (see PARA 524); and, in particular, functions of the Secretary of State under Pt VII (ss 128-139) so far as relating to the Countryside Council for Wales (as to which see PARA 524);
- 7 (7) functions under the Environment Act 1995 (see PARA 588 et seq);
- 8 (8) functions under the Countryside and Rights of Way Act 2000 Sch 11 (see PARA 578 et seq);
- 9 (9) functions under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716 (see PARA 728 et seq) except the functions of the Secretary of State under regs 71-78 (see PARAS 751-752).

4 Such functions include confirming orders designating national parks under the National Parks and Access to the Countryside Act 1949 s 5(3) (see PARA 636), acquiring land forming part of a national park under s 14(1) (see PARA 637), authorising under s 103 a local planning authority to acquire land compulsorily for the provision of facilities under s 12(4) (see PARAS 646, 668), and making grants to a national park authority under the Environment Act 1995 s 72(1) (see PARA 653). As to the meaning of 'national park' see PARA 636.

In the exercise of his functions under the Countryside Act 1968 (see PARA 566 et seq), the National Parks and Access to the Countryside Act 1949 (see PARA 636 et seq) and the Wildlife and Countryside Act 1981 (see PARA 636 et seq) it is the duty of every minister to have due regard to the needs of agriculture and forestry and to the economic and social interests of rural areas: Countryside Act 1968 s 37 (amended by the Wildlife and Countryside Act 1981 s 72(9); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 51).

5 Such functions include confirming an order designating an area as an area of outstanding natural beauty under the Countryside and Rights of Way Act 2000 s 83(3) (see PARA 658), and establishing a conservation board under s 86(1) (see PARA 660). As to the meaning of 'area of outstanding natural beauty' see PARA 658 note 2.

6 Such functions include designating areas as marine nature reserves under the Wildlife and Countryside Act 1981 s 36(1) (see PARA 666), and giving notifications in relation to wetlands of international importance under s 37A (see PARA 667).

7 Such functions include deciding appeals in relation to sites of special scientific interest under the Wildlife and Countryside Act 1981 s 28F(1) (see PARA 680) and s 28L (see PARA 689), taking steps to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which a site is of special scientific interest under s 28G(2) (see PARA 682), notifying Natural England or the Countryside Council for Wales of operations likely to damage any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest under ss 28H(1), 28I(1) (see PARAS 683, 684), and issuing guidance to persons exercising functions in relation to areas of special scientific

interest under s 33(1) (see PARA 685). As to sites of special scientific interest see PARA 674 et seq. As to Natural England see PARA 523; and as to the Countryside Council for Wales see PARA 524.

8 Such functions include making a limestone pavement order under the Wildlife and Countryside Act 1981 s 34(2): see PARA 698.

9 Such functions include making regulations in connection with the protection of important hedgerows under the Environment Act 1995 s 97(1) (see PARA 700), determining appeals under the Hedgerows Regulations 1997, SI 1997/1160, reg 9(1) (see PARA 706) in relation to hedgerow retention notices (see PARA 703) or notices under reg 8(1) (see PARA 705), and authorising under reg 12(2) (see PARA 708) any person to enter any land for the purpose of surveying it in connection with such an appeal. As to the meaning of 'hedgerow' see PARA 700 note 3.

10 Such functions include adding or removing species from the list of protected plants in the Wildlife and Countryside Act 1981 Sch 8 under s 22 (see PARA 712), and granting licences in relation to wild plants and animals under s 16(3) (see PARA 713).

11 Such functions include publishing a list of the living organisms and types of habitat which are of principal importance for the purpose of conserving biodiversity under the Natural Environment and Rural Communities Act 2006 ss 41(1), 42(1) (see PARA 757) and taking such steps as appear to be reasonably practicable to further the conservation of such organisms and habitats under ss 41(3), 42(3) (see PARA 757). In the exercise of functions regard must be had to the purpose of conserving biodiversity under s 40(1): see PARA 757.

12 Such functions include proposing a list of sites eligible for identification as of Community importance under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 7(1) (see PARA 729), designating sites of Community importance as special areas of conservation under reg 8 (see PARA 729), compiling and maintaining a register of European sites in Great Britain under reg 11(1) (see PARA 729) and a register of European offshore marine sites under the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 16 (see PARA 736), making special nature conservation orders under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 22 (see PARA 732), directing relevant authorities to establish or amend a management scheme for a European marine site under reg 35 (see PARA 735), making arrangements for the surveillance of the conservation status of natural habitats and species of Community interest under reg 37A (see PARA 738), granting licences under reg 37D (see PARA 743) or reg 44 (see PARA 744), authorising wildlife inspectors under reg 101C (see PARA 747), issuing a code of practice under reg 101H (see PARA 747), and holding local inquiries under reg 107 (see PARA 756). As to the meaning of 'European sites' see PARA 729 note 7; as to the meaning of 'European marine site' see PARA 735 note 2; and as to the meaning of 'European offshore marine sites' see PARA 736 note 12. Ministerial functions, powers and duties under enactments relating to nature conservation must be exercised so as to secure compliance with the requirements of the Habitats Directive: see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 3(2); and PARA 728 et seq. As to the Habitats Directive see PARA 728.

13 See PARA 520.

14 See PARA 521.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/2. LEGISLATIVE AND ADMINISTRATIVE AUTHORITIES/(1) CENTRAL AND LOCAL GOVERNMENT/520. Delegation of ministerial functions.

520. Delegation of ministerial functions.

Certain functions that fall to be performed by or through the Department for Environment, Food and Rural Affairs or the Department of Energy and Climate Change ('DEFRA or DECC functions')¹ may be delegated.

The Natural Environment and Rural Communities Act 2006 provides that the Secretary of State may enter into an agreement with a designated body² authorising that body to perform a DEFRA or DECC function: (1) either in relation to the whole of England or in relation to specified areas in England; (2) subject to head (1), either generally or in specified cases³. Such an agreement may be cancelled by the Secretary of State at any time, and does not prevent the Secretary of State from performing a function to which the agreement relates⁴.

A designated body ('A') may, with the approval of the Secretary of State, enter into an agreement with another designated body ('B') authorising B to perform a function of A that is related to or connected with a DEFRA or DECC function: (a) either in relation to the whole of England or in relation to specified areas in England; (b) subject to head (a), either generally or in specified cases⁵.

An agreement, and any approval given by the Secretary of State⁶, must be in writing⁷. The Secretary of State must arrange for a copy of an agreement to be published in a way that the Secretary of State thinks is suitable for bringing it to the attention of persons likely to be affected by it⁸.

An agreement⁹ may not authorise a designated body to perform a reserved function¹⁰. The maximum period for which an agreement may authorise a designated body to perform a DEFRA or DECC function, or a function that is related to or connected with a DEFRA or DECC function, is 20 years¹¹.

The fact that a function is conferred by or under the Natural Environment and Rural Communities Act 2006 or an Act passed after the passing of that Act does not prevent it from being the subject of an agreement¹².

The Secretary of State or a designated body ('A') may, under an agreement, authorise a designated body ('B') to perform a function even though under the relevant enactments or subordinate legislation: (i) the function is conferred on A by reference to specified circumstances or cases and the same type of function is conferred on B in different specified circumstances or cases; (ii) the function is exercisable by A and B jointly; (iii) B is required to be, or may be, consulted about the function (whether generally or in specified circumstances); or (iv) B is required to consent to the exercise of the function (whether generally or in specified circumstances)¹³.

An agreement may provide for the performance of a function to be subject to the fulfilment of conditions; and for payments to be made in respect of the performance of the function¹⁴.

A designated body which is authorised under an agreement to perform a function is to be treated as having power to do so¹⁵; and may, unless (or except to the extent that) the agreement provides for this provision not to apply, authorise a committee, sub-committee, member, officer or employee of the body to perform the function on its behalf or form a body corporate and authorise that body to perform the function on its behalf¹⁶. Where a local authority¹⁷ is authorised under an agreement to perform a function, the function that the local authority is authorised to perform is generally to be treated as a function of the local authority

for the purposes of: (A) any power of a local authority to arrange for the discharge of the function by any of the following persons, namely, any committee¹⁸, sub-committee, member, officer or employee of the local authority; and (B) any power of such a person to arrange for the discharge of a function by any other such person¹⁹.

Subject to the above provisions²⁰, a designated body which is authorised under an agreement to perform a function may not authorise any other body or other person to perform that function²¹.

No power of a Minister of the Crown under any enactment to give directions to a statutory body extends to giving a direction: (aa) requiring it to enter into an agreement; (bb) prohibiting it from entering into an agreement; (cc) requiring it to include, or prohibiting it from including, particular terms; (dd) requiring it to negotiate, or prohibiting it from negotiating, a variation or termination of an agreement²².

1 For the purposes of the Natural Environment and Rural Communities Act 2006 Pt 8 Ch 1, 'DEFRA or DECC function' means a function which at the material time falls to be performed by or through the Department for Environment, Food and Rural Affairs, or a former DEFRA function which at the material time falls to be performed by or through the Department of Energy and Climate Change: s 86(2) (substituted by SI 2009/229). For these purposes, a 'former DEFRA function' is a function that is transferred by the Secretary of State for Energy and Climate Change Order 2009, SI 2009/229, art 5, or that was entrusted to the Secretary of State for Environment, Food and Rural Affairs immediately before 3 October 2008 and was before the making of the Secretary of State for Energy and Climate Change Order 2009, SI 2009/229, entrusted to the Secretary of State for Energy and Climate Change: Natural Environment and Rural Communities Act 2006 s 86(2A) (added by SI 2009/229); Secretary of State for Energy and Climate Change Order 2009, SI 2009/229, art 2(3).

A certificate issued by the Secretary of State that a function falls to be performed as mentioned in the Natural Environment and Rural Communities Act 2006 s 86(2) is conclusive evidence of that fact: s 86(3). As to the Secretary of State see PARA 519.

2 As to the designated bodies for the purposes of the Natural Environment and Rural Communities Act 2006 Pt 8 Ch 1 (ss 78-86) see ss 80(1), 86(4), Sch 7.

The Secretary of State may by order amend Sch 7 so as to add a body to the list, or so as to remove a body from it: s 80(2). However, the Secretary of State may not exercise the power to add a body unless satisfied that at least one of the purposes or functions of the body to be added to the list is related to or connected with a DEFRA or DECC function: s 80(3). A body to be added to the list need not be a public body: s 80(4). The power to make an order under s 80(2) is exercisable by statutory instrument, and such an instrument is subject to annulment in pursuance of a resolution of either House of Parliament: s 80(5), (6).

3 Natural Environment and Rural Communities Act 2006 s 78(1) (amended by SI 2009/229). For these purposes, 'specified' means specified in the agreement: Natural Environment and Rural Communities Act 2006 s 78(1) (as so amended).

Section 78 is subject to ss 81, 82 (reserved functions and maximum duration of agreement: see the text and notes 9-11): s 78(3).

4 Natural Environment and Rural Communities Act 2006 s 78(2).

5 Natural Environment and Rural Communities Act 2006 s 79(1) (amended by SI 2009/229). For these purposes, 'specified' means specified in the agreement: Natural Environment and Rural Communities Act 2006 s 79(1) (as so amended). The Deregulation and Contracting Out Act 1994 Sch 15 (restrictions on disclosure of information: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 364) applies in relation to an authorisation by a designated body under the Natural Environment and Rural Communities Act 2006 Pt 8 Ch 1 as it applies in relation to an authorisation under the Deregulation and Contracting Out Act 1994 s 69 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 364) by an office-holder: Natural Environment and Rural Communities Act 2006 s 85(4).

The Secretary of State's approval may be given: (1) in relation to a particular agreement or in relation to a description of agreements; (2) unconditionally or subject to conditions specified in the approval: s 79(2). The Secretary of State must review an agreement under s 79 no later than the end of the period of five years beginning with the date on which the agreement was entered into or was last reviewed by him; and, if it appears appropriate to do so in the light of the review, he may cancel the agreement: s 79(3). An agreement under s 79 may not be varied except by agreement between A and B, and with the approval of the Secretary of State: s 79(4). An approval given under s 79(1) may provide that s 79(3) or (4) does not apply (or that both of them do not apply): s 79(5).

Section 79 is subject to ss 81, 82 (reserved functions and maximum duration of agreement: see the text and notes 9-11): s 79(6).

6 le under the Natural Environment and Rural Communities Act 2006 s 79: see the text and note 5.

7 Natural Environment and Rural Communities Act 2006 s 85(1).

8 Natural Environment and Rural Communities Act 2006 s 85(2).

9 For the purposes of the Natural Environment and Rural Communities Act 2006 ss 81-85, 'agreement' means an agreement under s 78 or s 79 (see the text and notes 1-5): s 86(1).

10 Natural Environment and Rural Communities Act 2006 s 81(1). The reserved functions are:

- 10 (1) any function whose performance by the designated body would be incompatible with the purposes for which the body was established (s 81(2)(a));
- 11 (2) any power of a Minister of the Crown to make or terminate appointments or lay reports or accounts (s 81(2)(b));
- 12 (3) any power to make subordinate legislation, give directions or guidance or issue codes of practice (or to vary or revoke any of those things) (s 81(2)(c));
- 13 (4) any power to fix fees or charges other than a power prescribed for the purposes of s 81 by an order made by the Secretary of State (s 81(2)(d));
- 14 (5) any function of an accounting officer in his capacity as such (s 81(2)(e));
- 15 (6) except in relation to an agreement authorising a public body to perform functions:
 - 3. (a) any power to enter, inspect, take samples or seize anything (s 81(2)(f)(i)); and
 - 4. (b) any other power exercisable in connection with suspected offences (s 81(2)(f)(ii));
- 16 (7) any function of the Secretary of State under the Water Industry Act 1991 or under any subordinate legislation made under that Act (s 81(2)(g)).

For the purposes of Pt 8 Ch 1, 'Minister of the Crown' has the same meaning as in the Ministers of the Crown Act 1975 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 363); and 'subordinate legislation' has the same meaning as in the Interpretation Act 1978 (see **STATUTES** vol 44(1) (Reissue) PARA 1381): Natural Environment and Rural Communities Act 2006 s 86(4). The power to make an order under head (4) is exercisable by statutory instrument, and such an instrument is subject to annulment in pursuance of a resolution of either House of Parliament: s 81(3), (4).

11 Natural Environment and Rural Communities Act 2006 s 82 (amended by SI 2009/229).

12 Natural Environment and Rural Communities Act 2006 s 83(1).

13 Natural Environment and Rural Communities Act 2006 s 83(2).

14 Natural Environment and Rural Communities Act 2006 s 83(3).

15 Natural Environment and Rural Communities Act 2006 s 83(4)(a). However, where the designated body is a local authority, s 83(4)(a) is subject to s 84(5)(a) (see note 19): s 83(5)(a).

16 Natural Environment and Rural Communities Act 2006 s 83(4)(b). However, where the designated body is a local authority, s 84 (see the text and notes 17-19) applies in place of s 83(4)(b): s 83(5)(b).

17 For the purposes of the Natural Environment and Rural Communities Act 2006 Pt 8 Ch 1, 'local authority' means a local authority as defined in the Local Government Act 2000 s 1(a), and the Greater London Authority (see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 79 et seq): Natural Environment and Rural Communities Act 2006 s 86(4). The Local Government Act 2000 s 1(a) has been amended and renumbered as s 1(1)(a): see **LOCAL GOVERNMENT** vol 69 (2009) PARA 23.

18 For these purposes, 'committee' does not include a joint committee of two or more local authorities: Natural Environment and Rural Communities Act 2006 s 84(4).

19 See the Natural Environment and Rural Communities Act 2006 s 84(1)-(3). However, if the local authority is operating executive arrangements: (1) the function is to be treated as a function of the local authority for the purposes of the Local Government Act 2000 s 13 (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 324-326) (Natural Environment and Rural Communities Act 2006 s 84(5)(a)); and (2) if (or to the extent that) the function is the responsibility of the executive of the local authority: (a) the provisions of s 84(2) do not apply; and (b) the Local Government Act 2000 ss 14-16 (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 357-359), and any regulations made under s 17 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 363) and s 18 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 360), apply (Natural Environment and Rural Communities Act 2006 s 84(5)(b)). 'Executive arrangements' and 'executive' have the same meanings as in the Local Government Act 2000 Pt 2 (ss 10-48) (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 303, 327): Natural Environment and Rural Communities Act 2006 s 84(6).

An agreement may provide that the provisions of s 84(2) or those mentioned in head (b) above do not apply (or do not apply to a specified extent): s 84(7).

20 le subject to the Natural Environment and Rural Communities Act 2006 s 83(4)(b) (see the text and note 16) and s 84 (see the text and notes 17-19).

21 Natural Environment and Rural Communities Act 2006 s 83(6).

22 Natural Environment and Rural Communities Act 2006 s 85(3).

UPDATE

520 Delegation of ministerial functions

NOTE 2--Natural Environment and Rural Communities Act 2006 Sch 7 amended: Marine and Coastal Access Act 2009 Sch 14 para 20 (not yet in force).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/2. LEGISLATIVE AND ADMINISTRATIVE AUTHORITIES/(1) CENTRAL AND LOCAL GOVERNMENT/521. Financial assistance.

521. Financial assistance.

The Secretary of State¹ may give or arrange for the giving of financial assistance in respect of expenditure incurred or to be incurred in any matter related to or connected with a DEFRA or DECC function². Such financial assistance may be given in any form, and may in particular be given by way of a grant, a loan or a guarantee³; and it may be given subject to such conditions as may be determined by, or in accordance with arrangements made by, the Secretary of State⁴. The power to give financial assistance under these provisions may be exercised even though a more specific power to give financial assistance exists⁵.

1 As to the Secretary of State see PARA 519.

2 Natural Environment and Rural Communities Act 2006 s 98(1) (amended by SI 2009/229). For these purposes, 'DEFRA or DECC function' means a function which falls to be performed by or through the Department for Environment, Food and Rural Affairs, or a former DEFRA function which falls to be performed by or through the Department of Energy and Climate Change (Natural Environment and Rural Communities Act 2006 s 98(5) (substituted by SI 2009/229)); and a 'former DEFRA function' is a function that is transferred by the Secretary of State for Energy and Climate Change Order 2009, SI 2009/229, art 5, or that was entrusted to the Secretary of State for Environment, Food and Rural Affairs immediately before 3 October 2008 and was before the making of the Secretary of State for Energy and Climate Change Order 2009, SI 2009/229, entrusted to the Secretary of State for Energy and Climate Change (Natural Environment and Rural Communities Act 2006 s 98(5A) (added by SI 2009/229); Secretary of State for Energy and Climate Change Order 2009, SI 2009/229, art 2(3)). A certificate issued by the Secretary of State that a function falls to be performed as mentioned in the Natural Environment and Rural Communities Act 2006 s 98(5) is conclusive evidence of that fact: s 98(6).

3 Natural Environment and Rural Communities Act 2006 s 98(2).

4 Natural Environment and Rural Communities Act 2006 s 98(3). The conditions may, in particular, include (in the case of a grant) conditions for repayment in specified circumstances: s 98(4).

5 Natural Environment and Rural Communities Act 2006 s 98(7).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/2. LEGISLATIVE AND ADMINISTRATIVE AUTHORITIES/(1) CENTRAL AND LOCAL GOVERNMENT/522. Local authorities.

522. Local authorities.

Local authorities¹ and local planning authorities² have various functions, powers and duties that affect open spaces. These include functions, powers and duties relating to town or village greens³, national parks⁴, areas of outstanding natural beauty⁵, nature reserves⁶, sites of special scientific interest⁷, green belts⁸, biodiversity⁹, and conservation of natural habitats and of wild fauna and flora that are of Community importance¹⁰. Local authorities may also be responsible for the management of certain public open spaces¹¹ (including, for example, common land¹²), and for the provision of recreational facilities and amenities¹³.

1 Local authorities are differently defined by different enactments and for different purposes, and the relevant definitions are set out where necessary in this title. As to local authorities generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

2 As to local planning authorities see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28 et seq.

3 Eg the powers, duties and liabilities transferred from vestries, churchwardens etc under the Local Government Act 1894 s 6(1)(c)(iii): see PARA 538.

4 Eg the duty to foster the economic and social well-being of local communities within the national park (see the National Parks and Access to the Countryside Act 1949 s 11A(2); and PARA 641), the power to plant trees (see s 89(1); and PARA 647), and the power to make byelaws (see eg the Countryside Act 1968 ss 13(1), 12(5); and PARA 649).

In the exercise of their functions under the Countryside Act 1968 (see PARA 566 et seq) and the National Parks and Access to the Countryside Act 1949 (see PARA 636 et seq) it is the duty of local authorities to have due regard to the protection against pollution of any water, whether on the surface or underground, which belongs to the Environment Agency or a water undertaker or which the Agency or a water undertaker is for the time being authorised to take: Countryside Act 1968 s 38 (amended by the Water Act 1989 Sch 25 para 37; the Environmental Protection Act 1990 Sch 8 para 2(9); the Natural Environment and Rural Communities Act 2006 Sch 11 para 52; and SI 1996/563). As to the Environment Agency see PARA 528; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq. As to water undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 et seq. It is also the duty of local authorities in the exercise of their functions under the Countryside Act 1968, the National Parks and Access to the Countryside Act 1949 and the Wildlife and Countryside Act 1981 (see PARA 636 et seq) to have due regard to the needs of agriculture and forestry and to the economic and social interests of rural areas: Countryside Act 1968 s 37 (amended by the Wildlife and Countryside Act 1981 s 72(9); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 51).

5 Eg the duty to have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty: see the Countryside and Rights of Way Act 2000 s 85(1); and PARA 659.

6 Eg the power to establish nature reserves: see the National Parks and Access to the Countryside Act 1949 s 21; and PARA 665.

7 Eg the duty to take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which a site is of special scientific interest: see the Wildlife and Countryside Act 1981 s 28G; and PARA 682.

8 Eg the power to enter into and enforce covenants restrictive of the user of land: see the Green Belt (London and Home Counties) Act 1938 ss 3(b), 22; PARA 699; and **TOWN AND COUNTRY PLANNING**.

9 Eg the duty to conserve biodiversity: see the Natural Environment and Rural Communities Act 2006 s 40(1); and PARA 757.

10 Local authority functions, powers and duties under enactments relating to nature conservation must be exercised so as to secure compliance with the requirements of the Habitats Directive: see the Conservation

(Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 3(3), (4); and PARA 728 et seq. As to the Habitats Directive see PARA 728.

11 See eg the Open Spaces Act 1906; and PARAS 569-577. Note that local authorities may have responsibilities for public open spaces under agreements made under the Town and Country Planning Act 1990 s 106 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 244 et seq), as well as frequently being trustees of charitable recreation grounds. As to a local authority's power to appropriate land to other uses see the Local Government Act 1972 s 122; *R (on the application of Beresford) v Sunderland City Council* [2003] UKHL 60 at [27]-[31], [2004] 1 AC 889 at [27]-[31], [2004] 1 All ER 160 at [27]-[31] per Lord Scott of Foscote; PARA 555; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 513.

12 See PARA 568.

13 As to the power of a local authority to provide recreational facilities see eg the Public Health Acts Amendment Act 1907 s 76(1)(c); the Local Government (Miscellaneous Provisions) Act 1976 s 19(1); PARA 559; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 595. As to the power of a local authority to place seating in public parks or pleasure grounds see the Public Health Acts Amendment Act 1907 s 76(1)(f); PARA 559; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 613. As to the power of a local authority to erect and maintain seats and drinking fountains in public places see the Public Health Act 1925 s 14; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 560; **LOCAL GOVERNMENT** vol 69 (2009) PARA 613. As to the power of a parish or community council to provide and maintain seats and shelters for the use of the public in, or on any land abutting on, any road within the parish or community see the Parish Councils Act 1957 s 1(1); and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 560; **LOCAL GOVERNMENT** vol 69 (2009) PARA 613. As to the power of a parish or community council to appropriate a limited part of certain open spaces and recreation grounds under its control for the purpose of providing public parking spaces for vehicles, including bicycles and motor-cycles, see the Road Traffic Regulation Act 1984 ss 57-60; and **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARAS 823-825. As to the duty of a local authority to remove vehicles abandoned on any land in the open air or on a highway, and the power to remove other things, see the Refuse Disposal (Amenity) Act 1978 ss 3-6; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARAS 743-746.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/2. LEGISLATIVE AND ADMINISTRATIVE AUTHORITIES/(2) NATURAL ENGLAND/523. Natural England.

(2) NATURAL ENGLAND

523. Natural England.

There is a body known as Natural England¹, which has functions conferred on it by statute². Except where otherwise expressly provided, Natural England's functions are exercisable in relation to England (including, where the context requires, the territorial sea adjacent to England) only³. Natural England has certain functions which are discharged through the Joint Nature Conservation Committee⁴.

Natural England's general purpose is to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development⁵. This general purpose includes:

- 1 (1) promoting nature conservation⁶ and protecting biodiversity⁷;
- 2 (2) conserving and enhancing the landscape⁸;
- 3 (3) securing the provision and improvement of facilities for the study, understanding and enjoyment of the natural environment⁹;
- 4 (4) promoting access to the countryside and open spaces and encouraging open-air recreation¹⁰; and
- 5 (5) contributing in other ways to social and economic well-being through management of the natural environment¹¹.

Natural England must keep under review all matters relating to its general purpose¹²; and, when reviewing any matter, it must consult such bodies as appear to it to have an interest in the matter¹³. It may undertake research into any matter relating to its general purpose¹⁴, or commission or support (by financial means or otherwise) research into any such matter¹⁵. In discharging its functions in monitoring nature conservation, carrying out research or analysing the resultant information, it must have regard to common standards¹⁶.

Natural England may carry out proposals which appear to it to further its general purpose¹⁷, or assist in, co-ordinate or promote the carrying out of such proposals by others¹⁸. It may also make and carry out experimental schemes¹⁹ designed to establish ways in which its general purpose might be furthered²⁰, or promote the making and carrying out of such schemes²¹.

Natural England must, at the request of a public authority²², give advice to that authority on any matter relating to its general purpose²³; and it may give advice to any person on any matter relating to its general purpose at the request of that person²⁴ or, if it thinks it appropriate to do so, on its own initiative²⁵. The advice that may be given includes, in relation to any power to make byelaws, recommendations as to the matters in respect of which byelaws should be made²⁶. It may also publish documents or provide information about any matter relating to its general purpose, or assist in the provision of such publications or information²⁷. If a person has so requested, and Natural England thinks that the request concerns a matter relating to its general purpose and presents special problems or requires special professional or technical skill, it may place the services of its officers or employees, or of any consultants it has engaged, at the disposal of any person²⁸. It may also provide training in relation to any matters in respect of which it has functions²⁹. Natural England may, with the consent of the Secretary of State, make such charges for its services³⁰ as appear to it to be reasonable³¹.

Natural England also has an advisory role under the Conservation (Natural Habitats, etc) Regulations 1994³².

Natural England has a duty to take such steps as appear to it expedient for securing that persons interested: (a) will be informed of the situation and extent of, and means of access to, national parks, other areas, being areas of outstanding natural beauty³³, and long-distance routes³⁴, and the accommodation and facilities available for persons wishing to visit national parks and such other areas or persons wishing to use such routes³⁵; and (b) will be able to learn about the history, natural features, flora and fauna of national parks and the objects of architectural, archaeological or historical interest therein and the opportunities for recreation available therein³⁶.

Natural England may make an agreement (a 'management agreement') with a person who has an interest in land about the management or use of the land, if doing so appears to it to further its general purpose³⁷.

If doing so appears to it to further its general purpose, Natural England may: (i) give financial assistance to any person³⁸; (ii) provide assistance to any person by making available goods or equipment free of charge or at a reduced cost³⁹.

In addition to those mentioned above, Natural England has various functions that are dealt with elsewhere in this title⁴⁰, including its functions under Part 2 of the Natural Environment and Rural Communities Act 2006⁴¹.

Natural England may do anything that appears to it to be conducive or incidental to the discharge of its functions⁴²; and, in particular, it may enter into agreements⁴³, acquire or dispose of property⁴⁴, borrow money⁴⁵, form bodies corporate or acquire or dispose of interests in bodies corporate (subject to the approval of the Secretary of State)⁴⁶, accept gifts⁴⁷, and invest money⁴⁸. It also has the power to institute criminal proceedings⁴⁹.

The Secretary of State must give Natural England guidance as to the exercise of any of its functions that relate to or affect regional planning and associated matters⁵⁰, and he may give it guidance as to the exercise of its other functions⁵¹. In discharging its functions, Natural England must have regard to any such guidance⁵². The Secretary of State may also give Natural England general or specific directions as to the exercise of its functions⁵³, and Natural England must comply with any such directions⁵⁴.

The Secretary of State may make grants to Natural England of such amounts as he thinks fit⁵⁵.

1 Natural Environment and Rural Communities Act 2006 s 1(1). As to the constitution of Natural England and related matters see s 1(5), Sch 1.

Natural England has taken over the functions of English Nature (formerly the Nature Conservancy Council for England) and the Countryside Agency (formerly the Countryside Commission), which have been dissolved: s 1(4). The Nature Conservancy Council for England, together with the Nature Conservancy Council for Scotland and the Countryside Council for Wales (see PARA 524), replaced the Nature Conservancy Council. The Nature Conservancy Council for England was established under the Environmental Protection Act 1990 s 128 (as originally enacted), and was renamed English Nature by the Countryside and Rights of Way Act 2000 s 73 (as originally enacted). The Countryside Commission was established under the name of the National Parks Commission by the National Parks and Access to the Countryside Act 1949 s 1 (as originally enacted); it was renamed the Countryside Commission by the Countryside Act 1968 s 1 (as originally enacted), and was further renamed the Countryside Agency by the Development Commission (Transfer of Functions and Miscellaneous Provisions) Order 1999, SI 1999/416, art 3.

As to the power of the Secretary of State to make transfer schemes in connection with the dissolution of English Nature and the Countryside Agency see the Natural Environment and Rural Communities Act 2006 s 26. As to the continuing power to make transfer schemes see s 27. As to transfer schemes see further s 28, Sch 3. As to the power to make interim arrangements requiring English Nature or the Countryside Agency to provide staff, premises and other facilities on a temporary basis to Natural England or to the Commission for Rural Communities see s 29. As to the Commission for Rural Communities see PARA 527. As to the Secretary of State see PARA 519.

As to the power of the Secretary of State to give Natural England directions in relation to the exercise of its functions, and the obligation to comply with such directions, see the National Parks and Access to the Countryside Act 1949 s 3 (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 8).

2 See the Natural Environment and Rural Communities Act 2006 s 1(2). Natural England has the functions conferred on it by or under the Natural Environment and Rural Communities Act 2006 or any other enactment: s 1(2).

Natural England is amongst the regulators designated for the purpose of imposing sanctions under the Regulatory Enforcement and Sanctions Act 2008: see s 37, Schs 5, 6; and **ADMINISTRATIVE LAW**.

3 Natural Environment and Rural Communities Act 2006 s 1(3) (amended by the Marine and Coastal Access Act 2009 s 311). Provision is made for determining which waters are to be treated as adjacent to Wales and to Scotland: see the Natural Environment and Rural Communities Act 2006 s 1(3A) (added by the Marine and Coastal Access Act 2009 s 311).

4 See the text and note 41; and PARA 525.

5 Natural Environment and Rural Communities Act 2006 s 2(1). In the exercise of its functions under the Countryside Act 1968 (see PARA 566 et seq) and the National Parks and Access to the Countryside Act 1949 (see PARA 636 et seq) it is the duty of Natural England to have due regard to the protection against pollution of any water, whether on the surface or underground, which belongs to the Environment Agency or a water undertaker or which the Agency or a water undertaker is for the time being authorised to take: Countryside Act 1968 s 38 (amended by the Water Act 1989 Sch 25 para 37; the Environmental Protection Act 1990 Sch 8 para 2(9); the Natural Environment and Rural Communities Act 2006 Sch 11 para 52; and SI 1996/563). As to the Environment Agency see PARA 528; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq. As to water undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 et seq. It is also the duty of Natural England in the exercise of its functions under the Countryside Act 1968, the National Parks and Access to the Countryside Act 1949 and the Wildlife and Countryside Act 1981 (see PARA 636 et seq) to have due regard to the needs of agriculture and forestry and to the economic and social interests of rural areas: Countryside Act 1968 s 37 (amended by the Wildlife and Countryside Act 1981 s 72(9); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 51).

6 For the purposes of the Natural Environment and Rural Communities Act 2006 Pt 1 (ss 1-30), 'nature conservation' means the conservation of flora, fauna or geological or physiographical features: s 30(1).

7 Natural Environment and Rural Communities Act 2006 s 2(2)(a).

8 Natural Environment and Rural Communities Act 2006 s 2(2)(b).

9 Natural Environment and Rural Communities Act 2006 s 2(2)(c).

10 Natural Environment and Rural Communities Act 2006 s 2(2)(d).

11 Natural Environment and Rural Communities Act 2006 s 2(2)(e). The purpose in s 2(2)(e) may, in particular, be carried out by working with local communities: s 2(3).

12 Natural Environment and Rural Communities Act 2006 s 3(1).

13 Natural Environment and Rural Communities Act 2006 s 3(2).

14 Natural Environment and Rural Communities Act 2006 s 3(3)(a). For the purposes of Pt 1, 'research' includes inquiries and investigations: s 30(1).

15 Natural Environment and Rural Communities Act 2006 s 3(3)(b).

16 Natural Environment and Rural Communities Act 2006 s 3(4). The text refers to common standards established under s 34(2)(c): see PARA 525.

17 Natural Environment and Rural Communities Act 2006 s 5(a).

18 Natural Environment and Rural Communities Act 2006 s 5(b).

19 A scheme is experimental if it involves: (1) the development or application of new methods, concepts or techniques; or (2) the testing or further development of existing methods, concepts or techniques: Natural Environment and Rural Communities Act 2006 s 8(2).

20 Natural Environment and Rural Communities Act 2006 s 8(1)(a). Before making an experimental scheme, Natural England must consult such persons as appear to it to have an interest in the subject matter of the scheme: s 8(3).

21 Natural Environment and Rural Communities Act 2006 s 8(1)(b).

22 For the purposes of the Natural Environment and Rural Communities Act 2006 Pt 1, a 'public authority' is any of the following:

- 17 (1) a Minister of the Crown (s 30(2)(a));
- 18 (2) a public body (including a government department, a local authority and a local planning authority) (s 30(2)(b));
- 19 (3) a person holding an office: (a) under the Crown; (b) created or continued in existence by a public general Act; or (c) the remuneration in respect of which is paid out of money provided by Parliament (s 30(2)(c));
- 20 (4) a statutory undertaker (s 30(2)(d)).

For the purposes of s 30(2), 'local authority' means a county council, a district council, a parish council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly; 'local planning authority' has the same meaning as in the Town and Country Planning Act 1990 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 2, 28 et seq); and 'statutory undertaker' means a person who is or is deemed to be a statutory undertaker for the purposes of any provision of the Town and Country Planning Act 1990 Pt 11 (ss 262-283) (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1009 et seq): Natural Environment and Rural Communities Act 2006 s 30(3). For the purposes of Pt 1, 'Minister of the Crown' has the same meaning as in the Ministers of the Crown Act 1975 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 363): Natural Environment and Rural Communities Act 2006 s 30(1).

23 Natural Environment and Rural Communities Act 2006 s 4(1). If Natural England has reason to believe that advice given under s 4(1) has been rejected, the public authority must, at its request, inform Natural England in writing whether the advice has been rejected and, if so, why: see s 4(2), (3). Without prejudice to its duties relating to national parks, it is the duty of Natural England: (1) in circumstances where it appears to the Secretary of State and to Natural England desirable that its assistance should be generally available, to inquire into and report on such questions referred to it by any other body of persons or person; and (2) to bring to the attention of the Secretary of State or of local planning authorities the effect on the natural beauty of such areas or places as aforesaid of developments, or developments of any class, which appear to Natural England to be likely to be prejudicial thereto: see the National Parks and Access to the Countryside Act 1949 s 85 (amended by the Countryside Act 1968 Sch 5; the Environmental Protection Act 1990 Sch 8 para 1(10); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 10(i)). As to national parks see PARA 636 et seq.

24 Natural Environment and Rural Communities Act 2006 s 4(4)(a).

25 Natural Environment and Rural Communities Act 2006 s 4(4)(b).

26 Natural Environment and Rural Communities Act 2006 s 4(5).

27 Natural Environment and Rural Communities Act 2006 s 9(1). Nothing in any other enactment imposing a duty or conferring a power on Natural England:

- 21 (1) to publish or assist in the publication of documents of a particular kind; or
- 22 (2) to provide or assist in the provision of information of a particular kind,

is to be read as limiting the power conferred by s 9(1): s 9(2).

28 Natural Environment and Rural Communities Act 2006 s 10(1), (2).

29 Natural Environment and Rural Communities Act 2006 s 10(3).

30 'Services' includes, in particular, anything done under the Natural Environment and Rural Communities Act 2006 s 4(1) or s 4(4)(a) (advice: see the text and notes 22-24), s 9 (information services etc: see the text and note 27), or s 10 (consultancy services: see the text and notes 28-29): s 11(2).

31 Natural Environment and Rural Communities Act 2006 s 11(1). The Secretary of State may by order make provision requiring charges to be paid in respect of, and for the purpose of meeting the cost of, issuing licences issued by Natural England under or by virtue of any enactment, other than licences for which charges are payable apart from s 11: s 11(3), (4). Such an order may make provision as to: (1) exemptions from or

reductions in charges; (2) remission of charges in whole or in part: s 11(5). The power to make an order under s 11(3) is exercisable by statutory instrument, and such an instrument is subject to annulment in pursuance of a resolution of either House of Parliament: s 11(6), (7).

32 See the Conservation (Natural Habitats, etc) Regulations 1994, SI 1994/2716, reg 110(1) (added by SI 2007/1843).

33 As to areas of outstanding natural beauty see PARA 658 et seq.

34 The long distance routes for which proposals under the National Parks and Access to the Countryside Act 1949 s 51 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 696 et seq) have been approved: National Parks and Access to the Countryside Act 1949 s 86(1)(a) (s 86(1) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 10(j)).

35 National Parks and Access to the Countryside Act 1949 s 86(1)(a) (as amended: see note 34).

36 National Parks and Access to the Countryside Act 1949 s 86(1)(b) (s 86(1) as amended (see note 34); and s 86(1)(b) amended by the Countryside Act 1968 s 21(4)). Natural England also has a duty to take such steps as appear to it expedient for securing that suitable methods of publicity are used for the prevention of damage in national parks and such other areas as are mentioned in the text and otherwise for encouraging a proper standard of behaviour on the part of persons visiting national parks and such other areas; and those methods must include the preparation and publication of a code of conduct for the guidance of persons visiting the countryside: National Parks and Access to the Countryside Act 1949 s 86(1) (as so amended). Natural England may for these purposes procure the production and sale to the public of books, guides and maps, the exhibition of posters and other advertisements, the giving of lectures and the provision and exhibition of cinematograph films: s 86(2) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 10(j)). The steps mentioned in the National Parks and Access to the Countryside Act 1949 s 86(1) include the making of contributions towards expenses incurred by other bodies of persons: s 86(3).

37 Natural Environment and Rural Communities Act 2006 s 7(1). As to such management agreements see PARA 763.

38 Natural Environment and Rural Communities Act 2006 s 6(1). Financial assistance under this provision may be given in any form, and may in particular be given by way of a grant, a loan or a guarantee (s 6(2)); and it may be given subject to conditions, including (in the case of a grant) conditions for repayment in specified circumstances (s 6(3)).

39 Natural Environment and Rural Communities Act 2006 s 6(4).

40 Eg the designation of national parks and areas of outstanding natural beauty (see PARAS 636, 658), the notification of areas as sites of special scientific interest (see PARA 674), and the preparation and revision of a code of conduct for the guidance of persons exercising the right of access under the Countryside and Rights of Way Act 2000 and of persons interested in access land (see PARA 593). As to the right of access see PARA 583; and as to the meaning of 'access land' see PARA 580. As a nature conservation body, it must exercise its functions so as to secure compliance with the requirements of the Habitats Directive: see PARA 728 et seq. As to the Habitats Directive see PARA 728 note 3.

41 As to the Natural Environment and Rural Communities Act 2006 Pt 2 (ss 31-39) see PARA 525.

42 Natural Environment and Rural Communities Act 2006 s 13(1).

43 Natural Environment and Rural Communities Act 2006 s 13(2)(a).

44 Natural Environment and Rural Communities Act 2006 s 13(2)(b).

45 Natural Environment and Rural Communities Act 2006 s 13(2)(c).

46 Natural Environment and Rural Communities Act 2006 s 13(2)(d).

47 Natural Environment and Rural Communities Act 2006 s 13(2)(e).

48 Natural Environment and Rural Communities Act 2006 s 13(2)(f).

49 Natural Environment and Rural Communities Act 2006 s 12(1). A person who is authorised by Natural England to prosecute on its behalf in proceedings before a magistrates' court is entitled to prosecute in such proceedings even though he is not a barrister or solicitor: s 12(2). As from a date to be appointed, this provision is amended so as to remove the reference to a barrister or solicitor: see s 12(2) (prospectively amended by the

Legal Services Act 2007 Sch 21 para 153, Sch 23). At the date at which this volume states the law, no such day had been appointed.

50 Natural Environment and Rural Communities Act 2006 s 15(1). The power to give guidance under s 15 includes power to vary or revoke it: s 15(5). Before giving guidance under s 15 the Secretary of State must consult Natural England, the Environment Agency, and such other persons as the Secretary of State thinks appropriate: s 15(3). The Secretary of State must publish any guidance given under s 15 as soon as is reasonably practicable after giving the guidance: s 15(4).

51 Natural Environment and Rural Communities Act 2006 s 15(2). See note 50.

52 Natural Environment and Rural Communities Act 2006 s 15(6).

53 Natural Environment and Rural Communities Act 2006 s 16(1). This does not apply to functions of Natural England that are exercisable through the Joint Nature Conservation Committee: s 16(2). As to the Joint Nature Conservation Committee see [PARA 525](#). The power to give directions under s 16 includes power to vary or revoke the directions: s 16(4). The Secretary of State must publish any directions given under s 16 as soon as is reasonably practicable after giving the directions: s 16(3).

54 Natural Environment and Rural Communities Act 2006 s 16(5).

55 Natural Environment and Rural Communities Act 2006 s 14(1). Such a grant may be made subject to such conditions as the Secretary of State thinks fit: s 14(2).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/2. LEGISLATIVE AND ADMINISTRATIVE AUTHORITIES/(3) THE COUNTRYSIDE COUNCIL FOR WALES/524. The Countryside Council for Wales.

(3) THE COUNTRYSIDE COUNCIL FOR WALES

524. The Countryside Council for Wales.

There is a body known as the Countryside Council for Wales, which has various functions relating to Wales conferred on it by statute¹. The Council has certain functions which are discharged through the Joint Nature Conservation Committee².

The Council must discharge its countryside functions³:

- 6 (1) for the conservation and enhancement of natural beauty in Wales and of the natural beauty and amenity of the countryside in Wales⁴, both in the areas designated under the National Parks and Access to the Countryside Act 1949 as national parks⁵ or under the Countryside and Rights of Way Act 2000 as areas of outstanding natural beauty⁶ and elsewhere⁷;
- 7 (2) for encouraging the provision or improvement, for persons resorting to the countryside in Wales, of facilities for the enjoyment thereof and for the enjoyment of the opportunities for open-air recreation and the study of nature afforded thereby⁸,

and must have regard to the social and economic interests of rural areas in Wales⁹.

For the purpose of nature conservation¹⁰ and fostering the understanding of nature conservation, the Council has the functions conferred on it by Part VII of the Environmental Protection Act 1990¹¹ and Part 2 of the Natural Environment and Rural Communities Act 2006¹². It is the duty of the Council in discharging its nature conservation functions to take appropriate account of actual or possible ecological changes¹³. The Welsh Ministers¹⁴ may give the Council general or specific directions with regard to the discharge of any of its nature conservation functions under Part VII of the Environmental Protection Act 1990¹⁵.

The Council also has the following functions, namely:

- 8 (a) certain functions previously discharged by the Nature Conservancy Council¹⁶;
- 9 (b) the establishment, maintenance and management of nature reserves¹⁷ in its area¹⁸;
- 10 (c) the provision of advice for the Welsh Ministers or any other minister on the development and implementation of policies for or affecting nature conservation in its area¹⁹;
- 11 (d) the provision of advice and the dissemination of knowledge to any persons about nature conservation in its area or about matters arising from the discharge of its functions²⁰;
- 12 (e) the commissioning or support (whether by financial means or otherwise) of research which in its opinion is relevant to any of its functions²¹.

The Council has general duties relating to: (i) the provision and improvement of facilities for the enjoyment of the countryside; (ii) the conservation and enhancement of the natural beauty and amenity of the countryside; and (iii) the need to secure public access to the countryside for the purposes of open-air recreation²². In addition, the Council has power, after consultation with

such local authorities, national park authorities and other bodies as appear to the Council to have an interest, to make and carry out or promote the carrying out of any experimental scheme designed to facilitate the enjoyment of the countryside, or to conserve and enhance its natural beauty or amenity, which in relation to the countryside generally or to any particular area involves the development or application of new methods, concepts or techniques, or the application of further development of existing methods, concepts or techniques, and is designed to illustrate the appropriateness of the scheme in question for the countryside generally or for any particular area²³.

The Council also has a duty to provide information services²⁴, and has an advisory role under the Conservation (Natural Habitats, etc) Regulations 1994²⁵.

The Council may: (A) make such charges for any of its services as it thinks fit²⁶; (B) accept any gift or contribution made to it for the purposes of any of its functions, and, subject to the terms of the gift or contribution and to the provisions of the National Parks and Access to the Countryside Act 1949 and the Countryside Act 1968, apply it for those purposes²⁷; and (C) do all such things as are incidental to, or conducive to the attainment of the purposes of, any of its functions²⁸.

The Council may, with the consent of or in accordance with a general authorisation given by the Welsh Ministers, give financial assistance by way of grant or loan (or partly in one way and partly in the other) to any person in respect of expenditure incurred or to be incurred by him in doing anything which in its opinion is conducive to nature conservation or fostering the understanding of nature conservation²⁹.

The Welsh Ministers may make grants to the Council of such amounts as they think fit³⁰.

In addition to those mentioned above, the Council has various functions that are dealt with elsewhere in this title³¹.

1 See the Environmental Protection Act 1990 s 128(1) (s 128 substituted by the Natural Environment and Rural Communities Act 2006 Sch 11 para 117); and see also the National Parks and Access to the Countryside Act 1949 s 1 (substituted by the Environmental Protection Act 1990 Sch 8 para 1(2); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 7, Sch 12). As to the functions of the Council see further the Countryside Act 1968 s 1 (substituted by the Natural Environment and Rural Communities Act 2006 Sch 11 para 42); and the Countryside Act 1968 s 2 (amended by the Local Government Act 1974 Sch 8; the Wildlife and Countryside Act 1981 s 72(7); the Environmental Protection Act 1990 Sch 8 para 2(3); the Countryside and Rights of Way Act 2000 Sch 4 para 4; the Natural Environment and Rural Communities Act 2006 Sch 11 para 43; and by virtue of SI 1999/416).

As to the constitution and proceedings of the Council see the Environmental Protection Act 1990 s 128(2)-(4) (as so substituted), Sch 6 (amended by the Natural Heritage (Scotland) Act 1991 Sch 11; the Government of Wales Act 1998 Sch 18 Pt 1; and the Natural Environment and Rural Communities Act 2006 Sch 11 para 126, Sch 12).

The Countryside Council for Wales, together with the Nature Conservancy Council for England (see PARA 523) and the Nature Conservancy Council for Scotland, replaced the Nature Conservancy Council. As to the transitional and savings provisions see the Environmental Protection Act 1990 s 139, Sch 11. The functions of the Countryside Council for Wales are exercisable in relation to Wales only, except where otherwise expressly provided; and for these purposes 'Wales' has the same meaning as in the Government of Wales Act 2006 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**): Environmental Protection Act 1990 s 128(1A) (added by the Marine and Coastal Access Act 2009 s 313(1), (2)).

As to the power of the Welsh Ministers to give the Council directions in relation to the exercise of its functions, and the obligation to comply with such directions, see the National Parks and Access to the Countryside Act 1949 s 3 (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 8).

The Council is amongst the regulators designated for the purpose of imposing sanctions under the Regulatory Enforcement and Sanctions Act 2008: see s 37, Schs 5, 6; and **ADMINISTRATIVE LAW**.

2 See the text and note 12; and PARA 525.

3 As to the Council's countryside functions see the National Parks and Access to the Countryside Act 1949 s 1 (as substituted: see note 1); the Environmental Protection Act 1990 s 130(1), (4) (amended by the Natural

Environment and Rural Communities Act 2006 Sch 11 para 119, Sch 12); and the Environmental Protection Act 1990 (Commencement No 6 and Appointed Day) Order 1991, SI 1991/685. The Countryside Council for Wales has such of the functions under the Acts amended by the Environmental Protection Act 1990 Sch 8 (which relates to countryside matters) as are assigned to it in accordance with the amendments effected by that Schedule: see s 130(1) (as so amended). The Council must exercise its functions under the Countryside Act 1968 for the purposes specified in s 130(2) (see the text and notes 7-9): Countryside Act 1968 s 1(1) (s 1 substituted by the Natural Environment and Rural Communities Act 2006 Sch 11 para 42).

In the exercise of its functions under the Countryside Act 1968 (see PARA 566 et seq) and the National Parks and Access to the Countryside Act 1949 (see PARA 636 et seq) it is the duty of the Council to have due regard to the protection against pollution of any water, whether on the surface or underground, which belongs to the Environment Agency or a water undertaker or which the Agency or a water undertaker is for the time being authorised to take: Countryside Act 1968 s 38 (amended by the Water Act 1989 Sch 25 para 37; the Environmental Protection Act 1990 Sch 8 para 2(9); the Natural Environment and Rural Communities Act 2006 Sch 11 para 52; and SI 1996/563). As to the Environment Agency see PARA 528; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq. As to water undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 et seq. It is also the duty of the Council in the exercise of its functions under the Countryside Act 1968, the National Parks and Access to the Countryside Act 1949 and the Wildlife and Countryside Act 1981 (see PARA 636 et seq) to have due regard to the needs of agriculture and forestry and to the economic and social interests of rural areas: Countryside Act 1968 s 37 (amended by the Wildlife and Countryside Act 1981 s 72(9); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 51).

4 The reference in the Environmental Protection Act 1990 s 130(2) to the conservation of the natural beauty of the countryside includes the conservation of its flora, fauna and geological and physiographical features: s 130(3).

5 As to national parks see PARA 636 et seq.

6 As to areas of outstanding natural beauty see PARA 658 et seq.

7 Environmental Protection Act 1990 s 130(2)(a) (amended by the Countryside and Rights of Way Act 2000 Sch 15 para 11).

8 Environmental Protection Act 1990 s 130(2)(b).

9 Environmental Protection Act 1990 s 130(2).

10 For these purposes, 'nature conservation' means the conservation of flora, fauna or geological or physiographical features: Environmental Protection Act 1990 s 131(6).

11 Ie the Environmental Protection Act 1990 Pt VII (ss 128-139).

12 See the Environmental Protection Act 1990 s 131(1) (substituted by the Natural Environment and Rural Communities Act 2006 Sch 11 para 120); the Environmental Protection Act 1990 s 131(3) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 120); and the Environmental Protection Act 1990 (Commencement No 6 and Appointed Day) Order 1991, SI 1991/685. As to the Natural Environment and Rural Communities Act 2006 Pt 2 (ss 31-39) see PARA 525.

13 Environmental Protection Act 1990 s 131(2) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 120).

14 As to the Welsh Ministers see PARA 519.

15 Environmental Protection Act 1990 s 131(4) (substituted by the Natural Environment and Rural Communities Act 2006 Sch 11 para 120). Directions may also be given to the Council under the National Parks and Access to the Countryside Act 1949 as to the exercise of their functions: see s 3 (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 8(1), (2)).

16 Environmental Protection Act 1990 s 132(1)(a) (s 132(1) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 121, Sch 12). The text refers to such of the functions previously discharged by the Nature Conservancy Council (see note 1) under the Acts amended by the Environmental Protection Act 1990 Sch 9 as are assigned to it in accordance with the amendments effected by that Schedule: Environmental Protection Act 1990 s 132(1)(a) (as so amended).

17 Ie within the meaning of the National Parks and Access to the Countryside Act 1949 s 15: see PARA 663.

18 Environmental Protection Act 1990 s 132(1)(b) (as amended: see note 16).

19 Environmental Protection Act 1990 s 132(1)(c) (as amended: see note 16); National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. See note 27. Without prejudice to its duty to national parks, it is the Council's duty, in circumstances where it appears to the Welsh Ministers and to the Council desirable that their assistance should be generally available, to inquire into and report on such questions referred to them by any other body of persons or person; and to bring to the attention of the Welsh Ministers or of local planning authorities the effect on the natural beauty of such areas or places as aforesaid of developments, or developments of any class, which appear to the Council to be likely to be prejudicial thereto: see the National Parks and Access to the Countryside Act 1949 s 85 (amended by the Countryside Act 1968 Sch 5; the Environmental Protection Act 1990 Sch 8 para 1(10); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 10(i)).

20 Environmental Protection Act 1990 s 132(1)(d) (as amended: see note 16). The text refers to its functions under s 132 (see heads (a)-(e) in the text) or s 134 (see the text and note 29). See note 27.

21 Environmental Protection Act 1990 s 132(1)(e) (as amended: see note 15). The text refers to any of its functions under s 132 (see heads (a)-(e) in the text) or s 134 (see the text and note 29). See note 27.

22 See the Countryside Act 1968 s 2 (amended by the Local Government Act 1974 Sch 8; the Wildlife and Countryside Act 1981 s 72(7); the Environmental Protection Act 1990 Sch 8 para 2(3); the Countryside and Rights of Way Act 2000 Sch 4 para 4; the Natural Environment and Rural Communities Act 2006 Sch 11 para 43; and by virtue of SI 1999/416).

23 Countryside Act 1968 s 4(1) (substituted by the Wildlife and Countryside Act 1981 s 40; and amended by the Environment Act 1995 Sch 10 para 8(1); the Natural Environment and Rural Communities Act 2006 Sch 11 para 44(1), (2); and SI 1999/416). For the purpose of these functions the Council, may:

- 23 (1) acquire land by agreement or compulsorily (see the Countryside Act 1968 s 4(3)(a) (s 4(3) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 44(1), (3); and SI 1999/416));
- 24 (2) acquire, hold, manage, dispose of or otherwise deal with land (see the Countryside Act 1968 s 4(3)(b));
- 25 (3) erect buildings and carry out works or other operations on land and hold, manage, maintain, hire, let or otherwise dispose of such works (see s 4(3)(c), (e));
- 26 (4) provide equipment, facilities and services on or in connection with land or its use and manage or dispose of them (see s 4(3)(d), (e));
- 27 (5) exercise any power to carry out work or to provide facilities or services conferred under the National Parks and Access to the Countryside Act 1949 or the Countryside Act 1968 on local authorities or local planning authorities (see s 4(3)(f)); and
- 28 (6) acquire by agreement or dispose of, or carry on or set up and carry on directly or through an agent, or itself carry on as agent, any business or undertaking relevant to the experimental project or scheme (see s 4(3)(g)).

Acquisition of land may be by agreement or may be compulsory: see s 4(3)(a) (as so amended). Disposal of or other dealing with land must have approval and must be subject to s 4: s 4(3)(b) (as so amended). Disposal may be by way of sale or exchange or by the letting of land or the granting of any interest in or right over land, but the Council may not dispose of land by way of gift: s 4(4) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 44(1), (4); and SI 1999/416). 'Land' includes any interest in or right over land: Countryside Act 1968 s 49(2). As to the meaning of 'interest' see PARA 639 note 4 (definition applied by s 49(1)). As to the meaning of 'local authority' see PARA 636 note 12 (definition applied by s 49(1)). The powers conferred by s 4(3)(c)-(f) may be exercised by the Council: (a) on land belonging to it; or (b) on such terms as may be agreed with the owners and any other persons whose authority is required for the purpose, on other land (and an agreement under head (b) may provide for the making by the Council of payments in consideration of the making of the agreement and payments by way of contribution towards expenditure incurred by the persons making the agreement in consequence of it): s 4(5) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 44(1), (4), (5); and SI 1999/416). The appropriate authority (as to the meaning of which see PARA 639 note 2) may enter such an agreement as respects an interest in Crown land (ie land an interest in which belongs to Her Majesty in right of the Crown or the Duchy of Lancaster, or to the Duchy of Cornwall, and land an interest in which belongs to a government department or is held in trust for Her Majesty for the purposes of a government department: Countryside Act 1968 s 47(1)) held by or on behalf of the Crown, and any such agreement as respects any other interest in Crown land has no effect unless approved by the appropriate authority: s 47(3). However, an agreement so authorised made by any government department has no effect unless it is approved by the Treasury; and in considering whether to make or approve an agreement so authorised and relating to land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, the department and the Treasury

must have regard to the purposes for which the land is held: s 47(4). Any power under the Countryside Act 1968 to acquire land compulsorily may be exercised to acquire an interest in Crown land, other than one held by or on behalf of the Crown, but only with the consent of the appropriate authority: s 47(2).

The provisions of s 4 (except for that authorising the compulsory purchase of land) have effect only to remove any legal limitation on the capacity of the Council and do not authorise any act or omission by the Council which, apart from these provisions, would be actionable at the suit of any person on any ground other than such a limitation: s 4(6) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 44(1), (4), (5); and SI 1999/416).

24 The provisions of the National Parks and Access to the Countryside Act 1949 s 86 (information services to be provided by Natural England: see PARA 523) apply to the Council in relation to national parks and other land in Wales as they apply to Natural England in relation to national parks and other land in England: s 86A (added by the Environmental Protection Act 1990 Sch 8 para 1(1)).

25 See the Conservation (Natural Habitats, etc) Regulations 1994, SI 1994/2716, reg 110(2) (added by SI 2007/1843).

26 Countryside Act 1968 s 1(2)(a) (as substituted: see note 3).

27 Countryside Act 1968 s 1(2)(b) (as substituted: see note 3). In particular, the Council has power to accept any gift or contribution made to it for the purposes of any of the functions conferred on it by the Environmental Protection Act 1990 s 132(1) (see heads (a)-(e) in the text) or s 134 (see the text and note 29) and, subject to the terms of the gift or contribution, to apply it to those purposes (s 132(2)(a) (s 132(2) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 121)); and it also has power to initiate and carry out such research directly related to those functions as it is appropriate that it should carry out instead of commissioning or supporting other persons under head (e) in the text (Environmental Protection Act 1990 s 132(2)(b) (as so amended)). The Council may do all such other things as are incidental or conducive to those functions including (without prejudice to the generality of this provision) making charges and holding land or any interest in or right over land: s 132(2) (as so amended). The functions conferred by s 132(1)(c)-(e) (see heads (c)-(e) in the text) and the functions conferred by s 132(2) are exercisable in relation to Wales and the Welsh zone; and for these purposes 'Welsh zone' has the same meaning as in the Government of Wales Act 2006 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**): Environmental Protection Act 1990 s 132(2A) (added by the Marine and Coastal Access Act 2009 s 313(1), (3)).

28 Countryside Act 1968 s 1(2)(c) (as substituted: see note 3). See also note 27.

29 Environmental Protection Act 1990 s 134(1) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 123). On making a grant or loan the Council may impose such conditions as it thinks fit, including (in the case of a grant) conditions for repayment in specified circumstances: Environmental Protection Act 1990 s 134(3) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 123). The Council must exercise its powers under the Environmental Protection Act 1990 s 134(3) so as to ensure that any person receiving a grant or loan under s 134 in respect of premises to which the public are to be admitted (on payment or otherwise) will, in the means of access both to and within the premises, and in the parking facilities and sanitary conveniences to be available (if any), make provision, so far as it is in the circumstances both practicable and reasonable, for the needs of members of the public visiting the premises who are disabled: Environmental Protection Act 1990 s 134(4) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 123). The functions conferred by s 134 are exercisable in relation to Wales and the Welsh zone; and for these purposes 'Welsh zone' has the same meaning as in the Government of Wales Act 2006 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**): Environmental Protection Act 1990 s 134(5) (added by the Marine and Coastal Access Act 2009 s 313(1), (4)).

30 Environmental Protection Act 1990 s 129(1) (s 129 substituted by the Natural Environment and Rural Communities Act 2006 Sch 11 para 118). Such a grant may be made subject to such conditions (including, in particular, conditions as to the use of the money for the purposes of the Joint Nature Conservation Committee) as the Welsh Ministers may think fit: Environmental Protection Act 1990 s 129(2) (as so substituted). As to the Joint Nature Conservation Committee see PARA 525. The Secretary of State may, with the approval of the Treasury, make to the Countryside Council for Wales out of moneys provided by Parliament grants of such amount and subject to such conditions if any as he may, with the approval of the Treasury, think fit: Wildlife and Countryside Act 1981 s 47(2) (amended by the Environmental Protection Act 1990 Sch 8 para 5; and the Natural Environment and Rural Communities Act 2006 Sch 11 para 92(1), (3), Sch 12).

31 Eg the designation of national parks and areas of outstanding natural beauty (see PARAS 636, 658), the notification of areas as sites of special scientific interest (see PARA 674), and the preparation and revision of a code of conduct for the guidance of persons exercising the right of access under the Countryside and Rights of Way Act 2000 and of persons interested in access land (see PARA 593). As to the right of access see PARA 583; and as to the meaning of 'access land' see PARA 580. As a nature conservation body, it must exercise its functions so as to secure compliance with the requirements of the Habitats Directive: see PARA 728 et seq. As to the Habitats Directive see PARA 728 note 3.

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(4) THE JOINT NATURE CONSERVATION COMMITTEE

525. The Joint Nature Conservation Committee.

The Joint Nature Conservation Committee (the 'joint committee'¹) was originally established under the Environmental Protection Act 1990², but was re-constituted³ and continues in existence under the Natural Environment and Rural Communities Act 2006⁴.

The joint committee and the UK conservation bodies⁵ have certain functions⁶ for the purposes of:

- 13 (1) nature conservation⁷; and
- 14 (2) fostering the understanding of nature conservation⁸,

and each of them must, in discharging those functions, have regard to actual or possible ecological changes⁹, and the desirability of contributing to sustainable development¹⁰.

The UK conservation bodies have the following functions¹¹, which may be discharged only through the joint committee¹²:

- 15 (a) providing advice to the appropriate authorities¹³ on the development and implementation of policies for or affecting any nature conservation matter which: (i) arises throughout the United Kingdom¹⁴ and raises issues common to England, Wales, Scotland and Northern Ireland; (ii) arises in one or more (but not all) of those places and affects the interests of the United Kingdom as a whole; or (iii) arises outside the United Kingdom¹⁵;
- 16 (b) providing advice to any persons and disseminating knowledge about any matter falling within head (a)(i), (ii) or (iii)¹⁶;
- 17 (c) establishing common standards throughout the United Kingdom for the monitoring of nature conservation and for research into nature conservation and the analysis of the resulting information¹⁷;
- 18 (d) commissioning or supporting (whether by financial means or otherwise) research which the joint committee thinks is relevant to any matter mentioned in heads (a) to (c)¹⁸,

and the joint committee may give advice or information to any of the UK conservation bodies on any matter which is connected with the functions of that UK conservation body, and in the opinion of the joint committee: (A) arises throughout the United Kingdom and raises issues common to England, Wales, Scotland and Northern Ireland; (B) arises in one or more (but not all) of those places and affects the interests of the United Kingdom as a whole; or (C) arises outside the United Kingdom¹⁹. The Secretary of State may give the joint committee general or specific directions as to the discharge of any function under these provisions²⁰, and the joint committee must comply with any such directions²¹.

The GB conservation bodies²² have the following functions, which may be discharged only through the joint committee²³:

- 19 (aa) functions relating to the listing of protected animals and plants²⁴;

- 20 (bb) commissioning or supporting (whether by financial means or otherwise) research which the joint committee thinks is relevant to those functions²⁵.

The joint committee may also provide advice and make representations under the Conservation (Natural Habitats, etc) Regulations 1994²⁶.

- 1 See the Natural Environment and Rural Communities Act 2006 s 39.
- 2 See the Environmental Protection Act 1990 s 128 (as originally enacted).
- 3 See the Natural Environment and Rural Communities Act 2006 s 31(b), Sch 4.
- 4 See the Natural Environment and Rural Communities Act 2006 s 31(a).
- 5 For these purposes, 'UK conservation bodies' means: (1) for England, Natural England; (2) for Wales, the Countryside Council for Wales; (3) for Scotland, Scottish Natural Heritage; (4) for Northern Ireland, the Council for Nature Conservation and the Countryside: Natural Environment and Rural Communities Act 2006 s 32(1)(a)-(d). As to Natural England see PARA 523; and as to the Countryside Council for Wales see PARA 524.
- 6 ie the functions conferred on them by the Natural Environment and Rural Communities Act 2006 Pt 2 (ss 31-39).
- 7 Natural Environment and Rural Communities Act 2006 s 33(1)(a). For the purposes of Pt 2, 'nature conservation' means the conservation of flora, fauna or geological or physiographical features: s 39.
- 8 Natural Environment and Rural Communities Act 2006 s 33(1)(b).
- 9 Natural Environment and Rural Communities Act 2006 s 33(2)(a).
- 10 Natural Environment and Rural Communities Act 2006 s 33(2)(b).
- 11 Each of the UK conservation bodies has power to do anything that appears to it to be conducive or incidental to its functions under the Natural Environment and Rural Communities Act 2006 Pt 2: s 37(1). In particular each of them may for the purposes of those functions: (1) acquire or dispose of property; (2) accept gifts; (3) undertake research directly related to those functions if it appears appropriate to do so: s 37(2). For the purposes of Pt 2, 'research' includes inquiries and investigations: s 39. Nothing in any of the enactments concerning the functions of the UK conservation bodies prevents any of them: (a) if requested to do so by any of the others, from giving advice or information to the other; or (b) from giving advice or information to the joint committee: s 37(3). For these purposes, 'enactment' includes an Act of the Scottish Parliament and Northern Ireland legislation: s 37(4).
- 12 Natural Environment and Rural Communities Act 2006 s 34(1).
- 13 For these purposes, 'appropriate authorities' means: (1) the Secretary of State (or any other Minister of the Crown); (2) the Welsh Ministers; (3) the Scottish Ministers; and (4) the relevant Northern Ireland department: Natural Environment and Rural Communities Act 2006 s 34(3). As to the Secretary of State and the Welsh Ministers see PARA 519. For these purposes, 'Minister of the Crown' has the same meaning as in the Ministers of the Crown Act 1975 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 363): Natural Environment and Rural Communities Act 2006 s 39. 'Relevant Northern Ireland department' means the Department of the Environment in Northern Ireland: s 39.
- 14 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Isle of Man nor the Channel Islands are within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3.
- 15 Natural Environment and Rural Communities Act 2006 s 34(2)(a).
- 16 Natural Environment and Rural Communities Act 2006 s 34(2)(b).
- 17 Natural Environment and Rural Communities Act 2006 s 34(2)(c).
- 18 Natural Environment and Rural Communities Act 2006 s 34(2)(d).

19 Natural Environment and Rural Communities Act 2006 s 35(1). In discharging their functions relating to nature conservation, the UK conservation bodies must have regard to any advice given to them under s 35(1): s 35(2).

20 Natural Environment and Rural Communities Act 2006 s 38(1). The Secretary of State may give such directions in relation to the discharge of any function under s 34 (see the text and notes 12-18) or s 35 (see the text and note 19), but not as to the discharge of a function under s 36 (see the text and notes 22-25): see s 38(1). This power to give directions includes power to vary or revoke the directions: s 38(4). Before giving any directions under s 38, the Secretary of State must consult the Welsh Ministers, the Scottish Ministers and the relevant Northern Ireland department: s 38(2). The Secretary of State must publish any directions as soon as is reasonably practicable after giving them: s 38(3).

21 Natural Environment and Rural Communities Act 2006 s 38(5).

22 For these purposes, 'GB conservation bodies' means Natural England, the Countryside Council for Wales and Scottish Natural Heritage: see the Natural Environment and Rural Communities Act 2006 s 32(1)(a)-(c), (2).

23 Natural Environment and Rural Communities Act 2006 s 36(1).

24 Natural Environment and Rural Communities Act 2006 s 36(2)(a). The functions referred to in the text are those under the Wildlife and Countryside Act 1981 s 22(3) (see PARA 712) and s 24(1) (see **ANIMALS** vol 2 (2008) PARA 1026): see the Natural Environment and Rural Communities Act 2006 s 36(2)(a), (3).

25 Natural Environment and Rural Communities Act 2006 s 36(2)(b).

26 See the Conservation (Natural Habitats, etc) Regulations 1994, SI 1994/2716, reg 109 (added by SI 2007/1843).

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(5) NATIONAL PARK AUTHORITIES

526. The national park authorities for England and Wales.

A national park authority¹ was established for each national park² in England on 1 October 1996³ and in Wales on 23 November 1995⁴, to carry out functions in relation to that park⁵. The national park authorities then established for England were: (1) the Dartmoor National Park Authority; (2) the Exmoor National Park Authority; (3) the Lake District National Park Authority; (4) the Northumberland National Park Authority; (5) the North York Moors National Park Authority; (6) the Peak District National Park Authority; and (7) the Yorkshire Dales National Park Authority⁶. The national park authorities then established for Wales were: (a) the Brecon Beacons National Park Authority (Awdurdod Parc Cenedlaethol Bannau Brycheiniog); (b) the Pembrokeshire Coast National Park Authority (Awdurdod Parc Cenedlaethol Arfordir Penfro); and (c) the Snowdonia National Park Authority (Awdurdod Parc Cenedlaethol Eryri)⁷. The Secretary of State or the Welsh Ministers⁸ may establish a national park authority in connection with the designation of any area as a new national park to carry out functions in relation to the park⁹. Under this power, the New Forest National Park Authority was established on 1 April 2005¹⁰. For many purposes, the Broads Authority¹¹ is treated as a national park authority¹².

Where there is a variation of the area of a national park for which there is or is to be a national park authority, the park is deemed, from the time the variation takes effect, to be the area as varied¹³.

A national park authority has various functions, powers and duties which are dealt with elsewhere in this title¹⁴. In particular, in pursuing the purposes of conserving and enhancing the natural beauty, wildlife and cultural heritage of an area and of promoting opportunities for the understanding and enjoyment of the special qualities of the area by the public¹⁵, a national park authority must seek to foster the economic and social well-being of local communities within the national park, and must co-operate with local authorities¹⁶ and public bodies whose functions include the promotion of economic or social development within the area of the national park¹⁷. Every national park authority for a national park must secure that there is at all times a national park officer appointed by that authority to be responsible to the authority for the manner in which the carrying out of its different functions is co-ordinated¹⁸. A national park authority for a national park in England must make arrangements with each parish council the area of which is comprised wholly or partly within the park, and a national park authority for a national park in Wales must make arrangements with each community council the area of which is so comprised, for the purpose of informing and consulting that council about the authority's discharge of its functions¹⁹.

1 As to the constitution etc of national park authorities see the Environment Act 1995 s 63(5), Sch 7 (amended by the Employment Rights Act 1998 Sch 3 Pt 1; the Audit Commission Act 1998 Sch 5; the Natural Environment and Rural Communities Act 2006 Sch 11 para 146; and the Local Government and Public Involvement in Health Act 2007 s 203(2), Sch 18 Pt 14; and prospectively amended by the Local Government Act 2000 Sch 6; and the Local Government and Public Involvement in Health Act 2007 Sch 14 para 4). See also the National Park Authorities (England) Order 1996, SI 1996/1243 (amended by SI 1996/2546; SI 1997/633; SI 2006/3165; SI 2009/557; SI 2009/837); the National Park Authorities (Wales) Order 1995, SI 1995/2803 (amended by SI 1996/534; SI 1996/1224; SI 1997/633; SI 2007/3423); and the New Forest National Park Authority (Establishment) Order 2005, SI 2005/421 (amended by SI 2006/3165; SI 2009/837). The Environment Act 1995 Pt III (ss 61-79) applies to England and Wales only: s 125(8).

2 As to national parks see PARA 636 et seq. This provision applies to national parks for which there was an existing authority: see the Environment Act 1995 s 63(1)(a). 'Existing authority' in relation to a national park means: (1) any such joint or special planning board for that park or for any area wholly or partly comprised in that park as was reconstituted by an order under the Local Government Act 1972 Sch 17 para 1 (repealed) or Sch 17 para 3 (repealed) or constituted by an order under Sch 17 para 3A (repealed) or under the Town and Country Planning Act 1990 s 2(1B) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 30); or (2) any national park committee for that park or for any such area: Environment Act 1995 s 79(1).

3 See the National Park Authorities (England) Order 1996, SI 1996/1243, arts 2, 3.

4 See the National Park Authorities (Wales) Order 1995, SI 1995/2803, art 3. As to the power to make, and the effect of, an order designating a date before 31 March 1997 on which a national park planning board for an existing national park in Wales would cease to be a national park planning board and would be reconstituted as a national park authority without affecting its corporate status see the Environment Act 1995 s 64. 'National park planning board' means: (1) a special planning board constituted by order under the Local Government Act 1972 Sch 17 para 3A (repealed) to discharge, as respects the area of a national park in Wales, the functions to which Sch 17 Pt I (repealed) applies; or (2) a joint planning board constituted by order under the Town and Country Planning Act 1990 s 2(1B) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 30) for a united district comprising the area of a national park in Wales: Environment Act 1995 s 64(9). 'Existing national park' means a national park in respect of which there was in force on 15 December 1994 an order under the National Parks and Access to the Countryside Act 1949 s 5 (see PARA 636): Environment Act 1995 s 64(9).

5 See the Environment Act 1995 s 63(1)(a); the National Park Authorities (England) Order 1996, SI 1996/1243 (as amended: see note 1); and the National Park Authorities (Wales) Order 1995, SI 1995/2803 (as amended: see note 1).

In relation to any national park for which there was an existing authority, the order could provide: (1) for the existing authority to cease to have any functions in relation to the park from the time the national park authority became the local planning authority for that park; (2) for any functions which were not to be functions of the national park authority to become functions of the person on whom they would be conferred if the area in question were not in a national park; and (3) for the winding up of the existing authority and for that authority to cease to exist or to be dissolved: see the Environment Act 1995 s 63(2). As to national park authorities as local planning authorities see PARA 644; and as to local planning authorities generally see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28 et seq.

6 See the National Park Authorities (England) Order 1996, SI 1996/1243, arts 3, 4, Sch 1 (Sch 1 substituted by SI 2006/3165; and amended by SI 2009/557; SI 2009/837).

7 See the National Park Authorities (Wales) Order 1995, SI 1995/2803, art 4, Sch 1.

8 As to the Secretary of State and the Welsh Ministers see PARA 519.

9 See the Environment Act 1995 s 63(1)(b). As to the power to designate an area as a national park and establish a national park authority for that area in the Isles of Scilly see the Environment Act 1995 s 77.

Any ministerial power to make orders relating to national park authorities under ss 61-74 is exercisable by statutory instrument: see s 75(1), (2). The powers to which s 75 applies include: (1) power to make incidental, supplemental, consequential and transitional provision (s 75(3)); and (2) power to make different provision for different cases, including different provision for different areas or localities and for different authorities (s 75(7)). These powers are without prejudice to any powers conferred by the Local Government and Public Involvement in Health Act 2007 Pt 1 (ss 1-30) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 57 et seq) or any other enactment: Environment Act 1995 s 75(8) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 1 para 18). For these purposes, 'enactment' includes an enactment contained in an Act passed after the Environment Act 1995: s 75(9). The power to make incidental, supplemental, consequential or transitional provision includes power for any incidental, supplemental, consequential or, as the case may be, transitional purpose:

29 (a) to apply with or without modifications;

30 (b) to extend, exclude or modify; or

31 (c) to repeal or revoke with or without savings,

any enactment or any instrument made under any enactment: s 75(4). The provision that may be made for incidental, supplemental, consequential or transitional purposes in the case of any order under Pt III which:

32 (i) establishes a national park authority or winds up the existing authority for any national park; or

- 33 (ii) otherwise has the effect of transferring functions from one person to another or of providing for functions to become exercisable concurrently by two or more persons or to cease to be so exercisable,

includes provision for the transfer of property, rights and liabilities from one person to another: s 75(5). For these purposes, 'liability', in relation to the transfer of liabilities from one person to another, does not include any criminal liability: s 79(1). Any power under Pt III to provide by order for the transfer of any property, rights or liabilities, or to make transitional provision in connection with any such transfer or with any order by which functions become or cease to be exercisable by any authority, includes power to provide:

- 34 (A) for the management and custody of any transferred property (whether real or personal) (s 75(6)(a));
- 35 (B) for any liabilities transferred to include liabilities under any enactment (s 75(6)(b));
- 36 (C) for legal proceedings commenced by or against any person to be continued by or against a person to whom property, rights or liabilities are transferred or, as the case may be, any authority by whom any functions are to become exercisable (s 75(6)(c));
- 37 (D) for the transfer of staff, compensation for loss of office, pensions and other staffing matters (s 75(6)(d)); and
- 38 (E) for treating any person to whom a transfer of property, rights or liabilities is made or, as the case may be, by whom any functions are to become exercisable as, for some or all purposes, the same person in law as the person from whom the transfer is made or the authority by whom the functions have previously been exercisable (s 75(6)(e)).

Any public authorities affected by an order under Pt III may from time to time make agreements with respect to any property, income, rights, liabilities or expenses (so far as affected by the order) of the parties to the agreement, or with respect to any financial relations between those parties: s 76(1). Such an agreement may provide: (aa) for the transfer or retention of any property, rights and liabilities (with or without conditions), and for the joint use of any property; (bb) for the making of payments by any party to the agreement in respect of property, rights and liabilities transferred or retained, the joint use of any property, or remuneration or compensation payable to any person; and (cc) for the making of any such payment either by way of a capital sum or by way of a terminable annuity: s 76(2). 'Public authority' means any local authority within the meaning of the Local Government Act 1972 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 23) (including any such authority in its capacity as a local planning authority), any national park authority, any existing authority for a national park, any joint authority established under the Local Government Act 1992 Pt II (ss 12-27) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 56), any residuary body established under the Local Government and Public Involvement in Health Act 2007 s 17 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 66), any joint authority established under the Local Government (Wales) Act 1994 s 34 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 386), or the Residuary Body for Wales established by s 39 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 18): Environment Act 1995 s 79(1) (amended by the Local Government and Public Involvement in Health Act 2007 Sch 1 para 18, Sch 18 Pt 1). In default of agreement as to any disputed matter, the matter must be referred to the arbitration of a single arbitrator agreed on by the parties or, in default of agreement, appointed by the Secretary of State or the Welsh Ministers; and the award of the arbitrator may make any provision that might be contained in an agreement under the Environment Act 1995 s 76: s 76(3). 'Disputed matter' means any matter which might be the subject of provision contained in an agreement under s 76 and which is the subject of such a dispute between two or more public authorities as is not resolved by or under provision contained in any order under Pt III: s 76(4).

10 See the New Forest National Park Authority (Establishment) Order 2005, SI 2005/421 (as amended: see note 1). The designation of the proposed South Downs National Park is due to take effect on 31 March 2010; and the national park authority is to be established in April 2010, becoming fully operational in April 2011.

11 As to the Broads Authority see PARA 531; and **WATER AND WATERWAYS** vol 101 (2009) PARA 734 et seq.

12 See eg the Wildlife and Countryside Act 1981 s 41(5A); and PARA 640.

13 Environment Act 1995 s 63(3). Transitional provision may be made with respect to any functions which: (1) in relation to an area that becomes part of the national park, are by virtue of the variation to become functions of that authority; and (2) in relation to any area that ceases to be part of the national park, are by virtue of the variation to become functions of a person other than that authority: s 63(4).

14 See PARA 636 et seq.

15 Ie under the National Parks and Access to the Countryside Act 1949 s 5(1): see PARA 636. As to the conservation or preservation of natural beauty see PARA 636 note 5.

16 As to the meaning of 'local authority' for these purposes see PARA 641 note 3.

17 See the National Parks and Access to the Countryside Act 1949 s 11A(1); and PARA 641. This duty takes effect, in the case of any particular national park, as from the time when a national park authority becomes the local planning authority for that park: see the Environment Act 1995 s 62(2); and PARA 641 note 4.

18 See the Environment Act 1995 Sch 7 para 14 (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 146).

19 See the Environment Act 1995 Sch 7 para 16.

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NOTE 10--See South Downs National Park Authority (Establishment) Order 2010, SI 2010/497.

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(6) THE COMMISSION FOR RURAL COMMUNITIES

527. The Commission for Rural Communities.

There is a body known as the Commission for Rural Communities¹, which has the general purpose of promoting: (1) awareness among relevant persons² and the public of rural needs³; and (2) the meeting of rural needs in ways that contribute to sustainable development⁴. The Commission must take such steps as appear to it to be appropriate for representing rural needs to relevant persons⁵, providing relevant persons with information and advice about issues connected with rural needs or ways of meeting them⁶, and monitoring, and making reports about, the way in which relevant persons' policies are developed, adopted and implemented (by rural proofing or otherwise) and the extent to which those policies are meeting rural needs⁷. The Commission may undertake research into any matter relating to its general purpose⁸, or commission or support (by financial means or otherwise) research into any such matter⁹; and it may also publish documents or provide information about any matter relating to its general purpose¹⁰, or assist in the provision of such publications or information¹¹. The Commission may, with the consent of the Secretary of State¹², make such charges for its services¹³ as appear to it to be reasonable¹⁴. The Commission may do anything that appears to it to be conducive or incidental to the discharge of its functions¹⁵; and, in particular, it may enter into agreements¹⁶, acquire or dispose of property¹⁷, borrow money¹⁸, accept gifts¹⁹, and invest money²⁰.

The Secretary of State may give the Commission general or specific directions as to the exercise of its functions²¹, and the Commission must comply with any such directions²². The Secretary of State may also make grants to the Commission of such amounts as the Secretary of State thinks fit²³.

1 Natural Environment and Rural Communities Act 2006 s 17(1). As to the constitution of the Commission and related matters see s 17(2), Sch 2.

2 For these purposes, 'relevant person' means a public authority, or a body which appears to the Commission to be concerned with any aspect of rural needs (Natural Environment and Rural Communities Act 2006 s 18(2)); and 'rural needs' means the social and economic needs of persons in rural areas in England (s 18(3)). In determining the social and economic needs of persons in those areas, particular regard is to be had to the needs of: (1) persons suffering from social disadvantage; and (2) areas suffering from economic under-performance: s 18(4). As to the meaning of 'public authority' see PARA 523 note 21.

3 Natural Environment and Rural Communities Act 2006 s 18(1)(a).

4 Natural Environment and Rural Communities Act 2006 s 18(1)(b).

5 Natural Environment and Rural Communities Act 2006 s 19(a).

6 Natural Environment and Rural Communities Act 2006 s 19(b).

7 Natural Environment and Rural Communities Act 2006 s 19(c).

8 Natural Environment and Rural Communities Act 2006 s 20(a). As to the meaning of 'research' see PARA 523 note 13.

9 Natural Environment and Rural Communities Act 2006 s 20(b).

10 Natural Environment and Rural Communities Act 2006 s 21(a).

- 11 Natural Environment and Rural Communities Act 2006 s 21(b).
- 12 As to the Secretary of State see PARA 519.
- 13 'Services' includes, in particular, anything done under the Natural Environment and Rural Communities Act 2006 s 21 (see the text and notes 10-11): s 22(1).
- 14 Natural Environment and Rural Communities Act 2006 s 22(1).
- 15 Natural Environment and Rural Communities Act 2006 s 23(1).
- 16 Natural Environment and Rural Communities Act 2006 s 23(2)(a).
- 17 Natural Environment and Rural Communities Act 2006 s 23(2)(b).
- 18 Natural Environment and Rural Communities Act 2006 s 23(2)(c).
- 19 Natural Environment and Rural Communities Act 2006 s 23(2)(d).
- 20 Natural Environment and Rural Communities Act 2006 s 23(2)(e).
- 21 Natural Environment and Rural Communities Act 2006 s 25(1). This power includes power to vary or revoke the directions: s 25(3). The Secretary of State must publish any directions as soon as is reasonably practicable after giving them: s 25(2).
- 22 Natural Environment and Rural Communities Act 2006 s 25(4).
- 23 Natural Environment and Rural Communities Act 2006 s 24(1). Such a grant may be made subject to such conditions as the Secretary of State thinks fit: s 24(2).

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(7) THE ENVIRONMENT AGENCY

528. The Environment Agency.

The principal aim of the Environment Agency¹ in discharging its functions is to protect and enhance the environment and to promote sustainable development², and it has various functions, duties and powers that may affect open spaces. It must, for example, in formulating or considering any proposals relating to its functions (other than its pollution control functions³), exercise any power conferred on it with respect to the proposals so as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest⁴; and in formulating or considering any proposals relating to its pollution control functions it must have regard to the desirability of conserving and enhancing natural beauty and of conserving flora, fauna and geological or physiographical features of special interest⁵. It must also have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, moor, heath, down, cliff or foreshore and other places of natural beauty⁶.

1 As to the Environment Agency see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq. The Agency is amongst the regulators designated for the purpose of imposing sanctions under the Regulatory Enforcement and Sanctions Act 2008: see s 37, Schs 5, 6; and **ADMINISTRATIVE LAW**.

2 See the Environment Act 1995 s 4(1); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 73.

3 As to the Environment Agency's pollution control functions see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 75.

4 See the Environment Act 1995 s 7(1)(a); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 77. See also s 6(1); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 76.

5 See the Environment Act 1995 s 7(1)(b); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 77.

6 See the Environment Act 1995 s 7(2)(a); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 77.

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(8) THE FORESTRY COMMISSION

529. The Forestry Commission.

The Forestry Commission¹ is responsible for the protection and expansion of forests and woodlands², and the Forestry Commissioners³ have various functions, duties and powers that may affect open spaces. In discharging their functions⁴ they must endeavour to achieve a reasonable balance between: (1) the development of afforestation, the management of forests and the production and supply of timber; and (2) the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest⁵. They encourage public access to land held by them, and have power to provide tourist, recreational or sporting facilities and any ancillary equipment, facilities or works (including, for example, picnic places, places for enjoying views, parking places, routes for nature study and footpaths, etc)⁶.

1 As to the constitution etc of the Forestry Commission see **FORESTRY** vol 52 (2009) PARA 34 et seq.

2 As to forestry generally see **FORESTRY** vol 52 (2009) PARA 1 et seq.

3 As to the Forestry Commissioners see **FORESTRY** vol 52 (2009) PARA 34. The Commissioners are amongst the regulators designated for the purpose of imposing sanctions under the Regulatory Enforcement and Sanctions Act 2008: see s 37, Schs 5, 6; and **ADMINISTRATIVE LAW**.

4 Ie their functions under the Forestry Acts 1967 to 1979, as to which see **FORESTRY**.

5 See the Forestry Act 1967 s 1(3A); and **FORESTRY** vol 52 (2009) PARA 38. See also the Countryside Act 1968 s 11 (duty to have regard to the desirability of conserving the natural beauty and amenity of the countryside in the exercise of functions relating to land); PARA 665; and **FORESTRY** vol 52 (2009) PARA 39. In the exercise of its functions under the Countryside Act 1968 (see PARA 566 et seq) and the National Parks and Access to the Countryside Act 1949 (see PARA 636 et seq) it is the duty of the Forestry Commission to have due regard to the protection against pollution of any water, whether on the surface or underground, which belongs to the Environment Agency or a water undertaker or which the Agency or a water undertaker is for the time being authorised to take: Countryside Act 1968 s 38 (amended by the Water Act 1989 Sch 25 para 37; the Environmental Protection Act 1990 Sch 8 para 2(9); the Natural Environment and Rural Communities Act 2006 Sch 11 para 52; and SI 1996/563). As to the Environment Agency see PARA 528; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq. As to water undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 et seq.

6 See the Countryside Act 1968 s 23(1), (2); the Forestry Act 1967 s 46(2)(c); the Forestry Commission Byelaws 1982, SI 1982/648; and **FORESTRY** vol 52 (2009) PARAS 39, 41-42.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/2. LEGISLATIVE AND ADMINISTRATIVE AUTHORITIES/(9) THE BRITISH WATERWAYS BOARD/530. The British Waterways Board.

(9) THE BRITISH WATERWAYS BOARD

530. The British Waterways Board.

As the largest of the navigation authorities that manage the inland waterways system¹, the British Waterways Board² has various functions, duties and powers relating to the environment and recreation which may affect open spaces. It must, for example, in formulating or considering any proposals relating to its functions, exercise any power conferred on it with respect to the proposals so as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest³; and it must have regard to the desirability of preserving for the public any freedom of access to towing paths and open land and especially to places of natural beauty⁴.

1 As to inland waterways see **WATER AND WATERWAYS** vol 101 (2009) PARA 713 et seq.

2 As to the constitution etc of the British Waterways Board see **WATER AND WATERWAYS** vol 101 (2009) PARA 725 et seq.

3 See the British Waterways Act 1995 s 22(1)(a); and **WATER AND WATERWAYS** vol 101 (2009) PARA 745.

4 See the British Waterways Act 1995 s 22(2)(a); and **WATER AND WATERWAYS** vol 101 (2009) PARA 745.

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(10) THE BROADS AUTHORITY

531. The Broads Authority.

The Broads Authority¹ has various functions, duties and powers relating to the environment and recreation which may affect open spaces in the Broads². It has a general duty to manage the Broads for purposes which include:

- 21 (1) conserving and enhancing the natural beauty, wildlife and cultural heritage of the Broads³; and
- 22 (2) promoting opportunities for the understanding and enjoyment of the special qualities of the Broads by the public⁴,

and, in discharging its functions, the Authority must have regard to factors which include:

- 23 (a) the national importance of the Broads as an area of natural beauty and one which affords opportunities for open-air recreation⁵; and
- 24 (b) the desirability of protecting the natural resources of the Broads from damage⁶.

1 As to the constitution etc of the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734.

2 As to the meaning of 'the Broads' see **WATER AND WATERWAYS** vol 101 (2009) PARA 735 note 2.

3 See the Norfolk and Suffolk Broads Act 1988 s 2(1)(a); and **WATER AND WATERWAYS** vol 101 (2009) PARA 735. References in the Norfolk and Suffolk Broads Act 1988 to conserving the natural beauty of an area include references to conserving its flora, fauna and geological and physiographical features: s 25(2). As to the duties of other public bodies in relation to conservation etc in the Broads see s 17A; and **WATER AND WATERWAYS** vol 101 (2009) PARA 736.

4 See the Norfolk and Suffolk Broads Act 1988 s 2(1)(b); and **WATER AND WATERWAYS** vol 101 (2009) PARA 735.

5 See the Norfolk and Suffolk Broads Act 1988 s 2(4)(a); and **WATER AND WATERWAYS** vol 101 (2009) PARA 735.

6 See the Norfolk and Suffolk Broads Act 1988 s 2(4)(b); and **WATER AND WATERWAYS** vol 101 (2009) PARA 735.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(1) TOWN AND VILLAGE GREENS/532. Introduction.

3. PUBLIC OPEN SPACES

(1) TOWN AND VILLAGE GREENS

532. Introduction.

The statutory definition, as set out in the Commons Registration Act 1965¹, of a town or village green is:

- 25 (1) land² which has been allotted by or under any Act for the exercise or recreation³ of the inhabitants of any locality⁴ (often referred to as a 'class (a) green'⁵);
- 26 (2) land on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes⁶ (often referred to as a 'class (b) green'⁷); or
- 27 (3) land on which for not less than 20 years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality⁸, have indulged in lawful sports and pastimes as of right and either continue to do so, or have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions⁹ (often referred to as a 'class (c) green'¹⁰).

In addition, a new green can be dedicated by the landowner¹¹.

The classification of a green relates only to the basis on which the land satisfies the definition¹², and is therefore registrable¹³; the land is not a green until it is registered¹⁴. Registration gives rise to rights for the inhabitants to indulge in sports and pastimes generally (and not only those which were the basis for registration)¹⁵, and has the effect of bringing the land within the scope of the nineteenth century legislation¹⁶ regardless of which class of green it is¹⁷.

The Commons Registration Act 1965 required town and village greens to be registered under that Act, and unless they were so registered they were deemed not to be a town or village green¹⁸. However, provision was made for registration of land becoming a town or village green subsequent to the closing date for the lodging of applications for registration¹⁹. Failure to register a class (a) or class (b) green under the Commons Registration Act 1965 led to its extinction²⁰, and even if the same land subsequently became registrable (for instance, by continued use for recreation by local inhabitants for 20 years after 1970) it would be as a new class (c) green not a revived one²¹.

The Commons Act 2006 provides for the replacement and improvement of the registration system introduced by the Commons Registration Act 1965, and enables registration of land as a town or village green in certain limited circumstances²².

There has been an increasing amount of recent litigation concerning greens, as their importance as a means of providing space for public enjoyment is recognised and as claims that certain areas are greens have been used in an attempt to prevent building development²³.

¹ The Commons Registration Act 1965 is to be repealed and replaced by the Commons Act 2006. At the date at which this volume states the law, the new provisions had only been brought into force in certain pilot areas: see further PARA 540; and **COMMONS** vol 13 (2009) PARA 506.

As to the essential characteristics of traditional town and village greens at common law see PARA 535.

2 'Land' includes land covered by water: Commons Registration Act 1965 s 22(1). See eg *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25, [2006] 2 AC 674, [2006] 4 All ER 817.

3 As to allotment of land for recreation purposes only see PARA 537.

4 Commons Registration Act 1965 s 22(1).

5 See eg *R v Oxfordshire County Council, ex p Sunningwell Parish Council* [2000] 1 AC 335, [1999] 3 All ER 385, HL; *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25 at [20], [2006] 2 AC 674 at [20], [2006] 4 All ER 817 at [20] per Lord Hoffmann. The classification is not found in the statute, and is a judicial gloss.

6 Commons Registration Act 1965 s 22(1). 'Sports and pastimes' is a composite phrase employing two words in order to avoid arguments about whether an activity is a sport or a pastime, and encompasses such informal activities (eg blackberry picking, flying kites, and tobogganing) as can properly be regarded as a 'sport or pastime' in modern times: see *R v Oxfordshire County Council, ex p Sunningwell Parish Council* [2000] 1 AC 335, [1999] 3 All ER 385, HL. Although a long period of non-use is strong evidence against the existence of a customary right to indulge in sports and pastimes on land, such a right cannot be lost by disuse or abandonment: see *New Windsor Corp v Mellor* [1975] Ch 380, [1975] 3 All ER 44, CA.

7 See note 5.

8 The use of the expression 'neighbourhood within a locality' appears to be an attempt to deal with the difficulty highlighted in *Ministry of Defence v Wiltshire County Council* [1995] 4 All ER 931, where three streets were held not to constitute a locality. See also *R v Suffolk County Council, ex p Steed* (1996) 75 P & CR 102, [1997] 1 EGLR 131, CA; *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25 at [26]-[27], [2006] 2 AC 674 at [26]-[27], [2006] 4 All ER 817 at [26]-[27] per Lord Hoffmann.

9 Commons Registration Act 1965 s 22(1), (1A) (s 22(1) amended, and s 22(1A) added, by the Countryside and Rights of Way Act 2000 s 98). For these purposes, 'prescribed' means prescribed by regulations under the Commons Registration Act 1965: s 22(1). If regulations made for these purposes provide for the prescribed period to come to an end unless prescribed steps are taken, the regulations may also require registration authorities to make available in accordance with the regulations, on payment of any prescribed fee, information relating to the taking of any such steps: s 22(1B) (added by the Countryside and Rights of Way Act 2000 s 98). At the date at which this volume states the law, no such regulations had been made. As to the registration authorities see **COMMONS** vol 13 (2009) PARA 507.

As to town and village greens based on 20 years' use see further PARA 536.

10 See note 5.

11 See the Commons Act 2006 s 15(8); and PARA 541. The consent of other persons interested may be required: see s 15(9); and PARA 541.

12 In addition to the classification based on the statutory definition, it is also possible to classify greens:

39 (1) by origin: that is, whether existing since time immemorial (ie existing before 3 September 1189: see **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 607) or provided under a local enactment or established based on 20 years' use or created by dedication (see further PARA 533);

40 (2) by locality: that is, whether town greens or village greens (note that greens are not necessarily grassy areas in the centre of ancient villages: they may, for instance, be rough marshy stretches of land (as in *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25, [2006] 2 AC 674, [2006] 4 All ER 817) or small patches beside a road; they may be surfaced with bare earth, tarmac or gravel; they may be in the open country and distant from any town or village buildings; and they may vary in size from a few square metres to several hectares); or

41 (3) by subsisting rights (in particular, whether or not subject to rights of common: see PARA 535; and **COMMONS** vol 13 (2009) PARA 527).

13 Registrable greens should be distinguished from areas of land held for charitable purposes for the benefit of the neighbourhood: see PARA 516.

14 See *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25 at [43], [2006] 2 AC 674 at [43], [2006] 4 All ER 817 at [43] per Lord Hoffmann.

15 See *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25 at [50], [2006] 2 AC 674 at [50], [2006] 4 All ER 817 at [50] per Lord Hoffmann.

16 Eg the Inclosure Act 1857 s 12; and the Commons Act 1876 s 29: see PARA 544.

17 See *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25 at [56], [2006] 2 AC 674 at [56], [2006] 4 All ER 817 at [56] per Lord Hoffmann. Note that a class (a) green established under a local Act may be subject to special provision.

18 See the Commons Registration Act 1965 s 1(1), (2); PARA 540; and **COMMONS** vol 13 (2009) PARA 506 et seq.

19 See the Commons Registration Act 1965 s 13(b) (repealed); the Commons Registration (New Land) Regulations 1969, SI 1969/1843, reg 3(1); PARA 540; and **COMMONS** vol 13 (2009) PARAS 506, 516. The closing date for applications was 2 January 1970: see the Commons Registration Act 1965 s 4(6); the Commons Registration (Time Limits) Order 1966, SI 1966/1470, art 3; and **COMMONS** vol 13 (2009) PARA 506.

20 See *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25 at [17]-[18], [2006] 2 AC 674 at [17]-[18], [2006] 4 All ER 817 at [17]-[18] per Lord Hoffmann, disapproving suggestions in *Re Turnworth Down, Dorset* [1978] Ch 251, [1977] 2 All ER 105 and *R v Suffolk County Council, ex p Steed* (1996) 75 P & CR 102, [1997] 1 EGLR 131, CA, to the effect that non-registration of a green would not have extinguished customary rights.

21 It would appear to follow that any rights attached (eg a customary way giving access to the green: see **CUSTOM AND USAGE** vol 12(1) (Reissue) PARAS 636-637) would have been extinguished and would not revive on registration.

22 As to registration under the Commons Act 2006 see PARA 540 et seq; and **COMMONS** vol 13 (2009) PARA 521 et seq. At the date at which this volume states the law, the Commons Act 2006 had not been fully brought into force: see note 1; and PARA 540.

23 See eg *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25, [2006] 2 AC 674, [2006] 4 All ER 817 (where there is discussion of the nature of greens, and much of the law relating to them). The recent case law is mainly concerned with class (c) greens.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(1) TOWN AND VILLAGE GREENS/533. Origin of greens.

533. Origin of greens.

A green cannot arise at common law (either by prescription or grant¹) but only by custom or statute². Traditional greens arose from custom³. Many greens have been created by statute under an Inclosure Act or a local municipal or similar Act⁴. By statute⁵ it is possible to register a green after 20 years' use⁶. It is also now possible for the owner of land voluntarily to dedicate it as a green⁷.

1 *A-G v Antrobus* [1905] 2 Ch 188.

2 See PARA 532.

3 As to traditional greens see PARA 535.

4 See PARA 537.

5 See the Commons Registration Act 1965 s 22; the Commons Act 2006 s 15; and PARAS 532, 541.

6 As to town and village greens based on 20 years' use see PARA 536.

7 See the Commons Act 2006 s 15(8); and PARA 541. The consent of other persons interested may be required: see s 15(9); and PARA 541.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(1) TOWN AND VILLAGE GREENS/534. Extinction of greens.

534. Extinction of greens.

A traditional class (b) green¹, having arisen by local custom for the benefit of the locality, can only be extinguished in the same way as other customs² (that is, generally, only under statutory provision³, although it appears that the destruction of the subject matter⁴ would have the same effect). Class (a) greens⁵ created by local act and class (c) greens⁶ created by the Commons Registration Act 1965 or the Commons Act 2006 can only be extinguished by statute or under statutory provision⁷. Any green which subsisted before the provisions of the Commons Registration Act 1965 took effect, and which was not registered, ceased to be one⁸.

The owner of any land registered as a green may apply to the appropriate national authority for the land to cease to be so registered and in such cases there may be a requirement for the provision of replacement land⁹.

It may be possible for a principal council which holds land registered as a green to override the registration¹⁰. However, a general statute giving power to acquire land or to appropriate it for other purposes will not be construed so as to extinguish town or village green rights without clear words¹¹, and any procedural requirements must be strictly followed¹².

1 As to traditional greens see PARA 535; and as to class (b) greens see PARA 532.

2 See **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 646 et seq.

3 *Hammerton v Honey* (1876) 24 WR 603; *Wyld v Silver* [1963] Ch 243, [1963] 1 QB 169.

4 Eg by erosion of the green by the sea.

5 As to class (a) greens see PARA 532.

6 As to class (c) greens see PARA 532.

7 As to statutory dispositions of land registered as a town or village green see **COMMONS** vol 13 (2009) PARA 544. As to compulsory purchase see the text and note 9.

8 See the Commons Registration Act 1965 s 1(2)(a); *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25 at [18], [2006] 2 AC 674 at [18], [2006] 4 All ER 817 at [18]; PARAS 532, 540; and **COMMONS** vol 13 (2009) PARA 506 et seq.

9 See the Commons Act 2006 s 16; and **COMMONS** vol 13 (2009) PARAS 545-548.

10 Ie under the Local Government Act 1972 s 123 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 515): see *R (on the application of Beresford) v Sunderland City Council* [2003] UKHL 60 at [27]-[31], [52], [2004] 1 AC 889 at [27]-[31], [52], [2004] 1 All ER 160 at [27]-[31], [52] per Lord Scott of Foscote, where the point was left open. As to the meaning of 'principal council' see **LOCAL GOVERNMENT** vol 69 (2009) PARA 23.

11 *Forbes v Ecclesiastical Comrs for England* (1872) LR 15 Eq 51; *R v Minister of Health, ex p Villiers* [1936] 2 KB 29, [1936] 1 All ER 817, DC.

12 See *Richardson v Minister of Housing and Local Government* (1957) 8 P & CR 29. As to powers of compulsory purchase and appropriation in relation to land comprised in a green see PARA 507; and **COMMONS** vol 13 (2009) PARA 481. As to powers of compulsory purchase generally see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 501 et seq.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(1) TOWN AND VILLAGE GREENS/535. Characteristics of traditional greens.

535. Characteristics of traditional greens.

Although the status of traditional greens now rests on statute¹, their origin was in local custom and they therefore had to have an origin from time immemorial².

Other than for the purposes of registration³, village greens and town greens, though frequently referred to in Acts of Parliament, have not been the subject of statutory definition. They may or may not be subject to rights of common⁴, but the essential characteristic of a town or village green is that the inhabitants of the town, village, or parish should have an immemorial customary right to use it for exercise and recreation⁵, including the playing of lawful games⁶. The nature of the enjoyment is a matter for proof in each case, and the custom must be limited to the inhabitants of the district for which it is claimed⁷: evidence proving that all the world went over and played games on a piece of waste land or common will not establish the custom for a particular parish⁸.

Town and village greens are expressly excepted from inclosure⁹, but in certain cases allotment may be made for recreation purposes¹⁰. There are restrictions on the compulsory purchase of land which is or forms part of a village or town green for the purpose of providing allotments¹¹.

A town or village green may, in certain circumstances, be the subject of a scheme for its regulation or of a charitable scheme¹².

1 See the Commons Registration Act 1965; the Commons Act 2006; and PARAS 540-541. See also *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25 at [17]-[19], [2006] 2 AC 674 at [17]-[19], [2006] 4 All ER 817 at [17]-[19].

2 If the origin was unknown, there had to be no facts or legal considerations inconsistent with an origin from time immemorial. As to time immemorial see PARA 532 note 12; and **CUSTOM AND USAGE** vol 12(1) (Reissue) PARAS 607-608. As to custom generally see **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 601 et seq. As to the origin of greens see PARA 533.

3 As to registration see PARAS 532, 540 et seq; and **COMMONS** vol 13 (2009) PARA 506 et seq.

4 As to rights of common see **COMMONS** vol 13 (2009) PARA 431 et seq.

5 As to such customary rights see **CUSTOM AND USAGE** vol 12(1) (Reissue) PARAS 633-634. The custom must have been reasonably exercised by those entitled to it: *Fitch v Fitch* (1797) 2 Esp 541 (to spoil cut hay in enjoyment of the right is unreasonable).

There is no right of occupation accruing on the inhabitants; licence to use the land for transitory purposes over a period of time, whether customary or otherwise, does not confer a right to occupy against the will of those shown to have title: *Epsom Borough Council v Nicholls* (1998) 78 P & CR 348.

6 *Warrick v Queen's College, Oxford* (1870) LR 10 Eq 105 at 129 (use of green as a place of pastime by the inhabitants of the parish); *Mounsey v Ismay* (1863) 1 H & C 729 (use of piece of land by freemen and citizens of a town for horse races).

7 The right cannot exist by custom in favour of the public in general nor in favour of all persons who for the time being happen to be in a particular district: see *Fitch v Rawling* (1795) 2 Hy Bl 393; *Hammerton v Honey* (1876) 24 WR 603; *Edwards v Jenkins* [1896] 1 Ch 308; *New Windsor Corp v Mellor* [1975] Ch 380, [1975] 3 All ER 44, CA; and **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 633. See also *Abbot v Weekly* (1665) 1 Lev 176 (where a custom for the inhabitants of a certain village to dance at all times of the year on a certain close, which may or may not have been a village green, was upheld); *Hall v Nottingham* (1875) 1 ExD 1; *Lancashire v Hunt* (1894) 11 TLR 49, CA (the 'Stockbridge Down case', where the right of the inhabitants of Stockbridge to ride and drive over the down and use it for all lawful games and recreation, including the right to erect tents

and other lawful and necessary accessories, was upheld, but the right to carry on the business of a trainer and train racehorses on the down was rejected).

8 See *Hammerton v Honey* (1876) 24 WR 603. See also the other cases cited in note 5.

9 See the Inclosure Act 1845 s 15 (amended by the Statute Law Revision Act 1891). As to inclosure see **COMMONS** vol 13 (2009) PARA 418 et seq.

10 See the Inclosure Act 1845 s 15; and PARA 537.

11 See **AGRICULTURAL LAND** vol 1 (2008) PARA 546.

12 As to schemes relating to greens see PARA 539.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(1) TOWN AND VILLAGE GREENS/536. Greens based on 20 years' use.

536. Greens based on 20 years' use.

The concept of a piece of land attaining the status of a town or village green¹ by virtue of 20 years' use by local inhabitants for the purposes of lawful sports and pastimes² was introduced by the Commons Registration Act 1965³ and continues to be embodied in the definition of 'town or village green' for registration purposes⁴.

The 20 years' use must be as of right⁵ and, although the users are not required to have any subjective belief in the existence of that right⁶, any deferral to the rights of the landowner may undermine their claim to use as of right⁷. The use must be such as to lead a reasonable landowner to conclude that a right was being asserted⁸; and while the toleration, as distinct from the permission, of the landowner will not defeat the claim⁹, an implied permission (which may take the form of mere acquiescence) will¹⁰. The use of any land by the inhabitants of any locality for the purposes of open-air recreation in the exercise of the right of access¹¹ is to be disregarded in determining whether the land has become a town or village green¹².

The user must be by a significant number of the inhabitants of any locality, or of any neighbourhood within a locality¹³, although this need not necessarily mean a considerable or substantial number¹⁴.

Under the Commons Registration Act 1965, the user must continue until the date of the application for registration¹⁵, although provision may be made by regulations for a green to continue to be registrable notwithstanding that the landowner has ended the use¹⁶; but, under the Commons Act 2006, land may be registrable as a green for a limited time after cessation of the user¹⁷.

It was formerly unclear what rights, if any, are conferred by the registration of a town or village green on the basis of 20 years' user¹⁸, but this has now been clarified and it is established that land registered as a town or village green can be used generally for sports and pastimes¹⁹.

1 As to the essential characteristics of town and village greens at common law see PARA 535; and as to the meaning of 'town or village green' for registration purposes see PARA 532.

2 As to the meaning of 'sports and pastimes' see PARA 532 note 6.

3 See the Commons Registration Act 1965 s 22(1) (as originally enacted). As to the prospective repeal of the Commons Registration Act 1965 see PARA 540; and **COMMONS** vol 13 (2009) PARA 506.

4 See the Commons Registration Act 1965 s 22(1), (1A); the Commons Act 2006 s 15; and PARAS 532, 540.

5 See the Commons Registration Act 1965 s 22(1), (1A); the Commons Act 2006 s 15; and PARAS 532, 540.

6 See *R v Oxfordshire County Council, ex p Sunningwell Parish Council* [2000] 1 AC 335, [1999] 3 All ER 385, HL.

7 *R (on the application of Lewis) v Redcar and Cleveland Borough Council (No 2)* [2009] EWCA Civ 3, [2009] 1 WLR 1461 (where local inhabitants 'overwhelmingly deferred' to golfers in their use of the land).

8 *R (on the application of Lewis) v Redcar and Cleveland Borough Council (No 2)* [2009] EWCA Civ 3, [2009] 1 WLR 1461.

9 *R v Oxfordshire County Council, ex p Sunningwell Parish Council* [2000] 1 AC 335, [1999] 3 All ER 385, HL.

10 *R (on the application of Beresford) v Sunderland City Council* [2001] EWCA Civ 1218, [2002] QB 874, [2001] 4 All ER 565; on appeal *R (on the application of Beresford) v Sunderland City Council* [2003] UKHL 60, [2004] 1 AC 889, [2004] 1 All ER 160. See also *R (on the application of Laing Homes Ltd) v Buckinghamshire County Council* [2003] EWHC 1578 (Admin) [2004] 1 P & CR 573, [2003] 3 EGLR 70 (landowner's activities may be inconsistent with village green rights).

11 *le* under the Countryside and Rights of Way Act 2000 s 2(1): see PARA 583.

12 See the Countryside and Rights of Way Act 2000 s 12(4); and PARA 583.

13 See PARA 532 note 8.

14 See *R (on the application of McAlpine Homes Ltd) v Staffordshire County Council* [2002] EWHC 76 (Admin), [2002] All ER (D) 96 (Jan).

15 See *Ministry of Defence v Wiltshire County Council* [1995] 4 All ER 931 at 938 per Harman J.

16 See the Commons Registration Act 1965 s 22(1), (1A); and PARAS 532, 540. At the date at which this volume states the law, no such regulations had been made.

17 See the Commons Act 2006 s 15; and PARA 541.

18 See *R (on the application of Laing Homes Ltd) v Buckinghamshire County Council* [2003] EWHC 1578 (Admin) at [40]-[49], [2004] 1 P & CR 573 at [40]-[49], [2003] 3 EGLR 69 at [40]-[49] per Sullivan J (reviewing *New Windsor Corpn v Mellor* [1975] Ch 380 at 391-392, [1975] 3 All ER 44 at 51, CA, per Lord Denning MR; *R v Suffolk County Council, ex p Steed* (1996) 75 P & CR 102 at 113-115, CA, per Pill LJ; and *R v Oxfordshire County Council, ex p Sunningwell Parish Council* [2000] 1 AC 335 at 347, [1999] 3 All ER 385 at 388, HL, per Lord Hoffmann).

19 See *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25 at [49]-[50], [2006] 2 AC 674 at [49]-[50], [2006] 4 All ER 817 at [49]-[50] per Lord Hoffmann. See also *Fitch v Rawling* (1795) 2 Hy Bl 393, 126 ER 614.

UPDATE

536 Greens based on 20 years' use

NOTES 5-7--See *R (on the application of Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire CC* [2010] EWHC 530 (Admin), [2010] All ER (D) 249 (Mar) (notices on land prohibiting public right of way did not render recreational use of land contentious).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(1) TOWN AND VILLAGE GREENS/537. Allotment for recreation purposes only.

537. Allotment for recreation purposes only.

Town greens and village greens¹ could be created² under a local enactment and such greens are now known as class (a) greens³. Many were established under specific Inclosure Acts before 1845⁴. Under the Inclosure Act 1845 they were expressly excepted from inclosure⁵, but the Inclosure Commissioners⁶ were empowered, if they thought fit, to direct that any town green or village green in the parish in which an inclosure was being made should be allotted⁷ and awarded for purposes of exercise and recreation⁸; and any such green might be so allotted in addition to other land which might be allotted for purposes of exercise and recreation, or, if the Inclosure Commissioners thought it sufficient, in substitution for other land which might have been required to be allotted for such purposes⁹.

In every case in which such a town or village green adjoined land subject to inclosure, and was not separated from it by fences or known bounds, the Inclosure Commissioners were required to set out in the provisional order concerning the inclosure a boundary line between such green and the adjoining land, and in their annual report to mention and describe such boundary¹⁰.

Numerous local private or municipal Acts have established areas for recreation of local inhabitants. It is a matter of construing the Act in question to determine if it created a registrable green or not¹¹. It appears that if such an Act prior to the final registration date in 1970 did establish a green then any such area which was not registered would have lost its status¹². However, if it remained vested in a local authority it would probably have become a public open space. A local authority can only acquire and hold land under statutory powers¹³, and where it holds land not comprising a green but which has been used by local inhabitants as of right for recreation for 20 years the land may become registrable as a green¹⁴.

1 As to the essential characteristics of town and village greens at common law see PARA 535; and as to the meaning of 'town or village green' for registration purposes see PARA 532.

2 As to the origin of greens see PARA 533.

3 As to class (a) greens see PARA 532.

4 See eg *Wyld v Silver* [1963] Ch 243, [1963] 1 QB 169.

5 See the Inclosure Act 1845 s 15 (amended by the Statute Law Revision Act 1891). As to inclosure see **COMMONS** vol 13 (2009) PARA 418 et seq.

6 As to the Inclosure Commissioners and their successors see **COMMONS** vol 13 (2009) PARA 423 note 3.

7 As to the churchwardens and overseers of the parish: see the Inclosure Act 1845 s 15 (as amended: see note 5). See further PARA 538.

8 See the Inclosure Act 1845 s 15 (as amended: see note 5). As to provisions for making and maintaining the fences, preserving the surface, and draining and levelling see s 73 (amended by the Statute Law Revision Act 1891; and the Statute Law (Repeals) Act 1998); applied by the Inclosure Act 1845 s 15 (as so amended).

9 See the Inclosure Act 1845 s 15 (as amended: see note 5).

10 See the Inclosure Act 1845 s 15 (as amended: see note 5).

11 See eg *Re The Rye, High Wycombe, Buckinghamshire* [1977] 3 All ER 521, [1977] 1 WLR 1316 (where the land was held not registrable as a green).

12 See PARAS 532, 534, 540. As to the closing date for applications see PARA 532 note 19.

13 As to the powers of local authorities in relation to land see **LOCAL GOVERNMENT** vol 69 (2009) PARA 508 et seq.

14 *R (on the application of Beresford) v Sunderland City Council* [2003] UKHL 60, [2004] 1 AC 889, [2004] 1 All ER 160. However, before that time has passed the authority may appropriate it for some other purpose: *R (on the application of Beresford) v Sunderland City Council* [2003] UKHL 60, [2004] 1 AC 889, [2004] 1 All ER 160.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(1) TOWN AND VILLAGE GREENS/538. Vesting.

538. Vesting.

Many traditional greens belonged in the past to the lord of the manor, and some may still do so¹; and greens that have that status by virtue of 20 years' use will still belong to the (often private) owner².

Formerly, recreation allotments under the Inclosure Act 1845³ were vested in the churchwardens and overseers of the parish, as were many town or village greens⁴. The powers, duties and liabilities of the churchwardens and overseers with respect to the holding of greens or of allotments have been transferred to the relevant local authority⁵.

The Commons Registration Act 1965 made provision for the vesting of unclaimed land, with the question of ownership being referred to a Commons Commissioner⁶. Although this is now repealed, the repeal does not affect the vesting of land in any local authority occurring by virtue of that provision⁷. The vesting does not amount to expropriation of unknown owners, and relates to legal title: it does not affect any beneficial rights, so that if land was so vested and subsequently a private land owner is able to prove title that landowner may be entitled to apply to the Land Registry to be registered as proprietor⁸.

1 See eg *Rabett v Poole* [2003] 3 EGLR 143, Bury St Edmunds County Court. See also the Inclosure Act 1845 s 16 (amended by the Statute Law Revision Act 1891); and see further *Re The Rye, High Wycombe, Buckinghamshire* [1977] 3 All ER 521, [1977] 1 WLR 1316. As to traditional greens see PARA 535.

2 As to town and village greens based on 20 years' use see PARA 536.

3 As to recreation allotments see PARA 537. Awards under specific pre-1845 Inclosure Acts could also so allot and vest land but reference should be made to each Act, as a variety of arrangements was used including vesting the land in trustees or retaining it in the name of lord of the manor or other prominent landowner.

4 See the Inclosure Act 1845 ss 15, 73; and PARA 537.

5 See eg the Local Government Act 1894 s 6(1)(c)(iii). As to local authorities and the development and reorganisation of local government see further **LOCAL GOVERNMENT** vol 69 (2009) PARA 3 et seq.

6 See the Commons Registration Act 1965 s 8 (repealed). As to the Commons Commissioners see **COMMONS** vol 13 (2009) PARA 425.

7 See the Commons Act 2006 Sch 3 para 9; and **COMMONS** vol 13 (2009) PARA 543.

8 The principle set out in the text must follow from the provisions of the Human Rights Act 1998: see PARA 503; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 165. However, the right may have been lost, eg by adverse possession. As to the Land Registry and land registration generally see **LAND REGISTRATION**.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(1) TOWN AND VILLAGE GREENS/539. Schemes relating to greens.

539. Schemes relating to greens.

Unless a town or village green¹ is subject to rights of common², it cannot be the subject of a scheme under the Metropolitan Commons Acts 1866 to 1898³ for regulation⁴, but it may be the subject of a similar scheme under the Commons Act 1899⁵.

Any provisions with reference to town or village greens or with respect to the management of them contained in any Inclosure Act⁶ or award may, on the application of an interested local authority⁷, be dealt with by a scheme of the Charity Commission⁸ in the exercise of its ordinary jurisdiction⁹.

1 As to the essential characteristics of town and village greens at common law see **PARA 535**; and as to the meaning of 'town or village green' for registration purposes see **PARA 532**.

2 As to rights of common see **COMMONS** vol 13 (2009) **PARA 431** et seq.

3 As to the Metropolitan Commons Acts, and schemes under those Acts, see **LONDON GOVERNMENT**.

4 See the Metropolitan Commons Act 1866 s 3 (definition of 'common'); and **LONDON GOVERNMENT**.

5 See the Commons Act 1899 ss 14, 15 (definition of 'common'); and **COMMONS** vol 13 (2009) **PARA 590**. As to schemes for the regulation and management of commons under the Commons Act 1899 see **COMMONS** vol 13 (2009) **PARA 590** et seq.

6 As to the Inclosure Acts see **COMMONS** vol 13 (2009) **PARA 419**.

7 The Commons Act 1899 s 18 refers to a district or parish council, but in Wales this should now be taken to be a reference to a county, county borough or community council. For the purposes of s 18, the Broads Authority is to be treated as a district council: see s 18 (amended by the Norfolk and Suffolk Broads Act 1988 Sch 6 para 1). A national park authority has the same power to make an application under the Commons Act 1899 s 18 as a local authority: Environment Act 1995 Sch 9 para 1(4). As to areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) **PARA 22** et seq. As to national parks and national park authorities see **PARA 636** et seq. As to the Broads Authority see **PARA 531**; and **WATER AND WATERWAYS** vol 101 (2009) **PARA 734**.

8 As to charitable schemes see **CHARITIES** vol 8 (2010) **PARA 177** et seq. As to the Charity Commission see **CHARITIES** vol 8 (2010) **PARA 538** et seq.

9 See the Commons Act 1899 s 18; and **CHARITIES** vol 8 (2010) **PARA 177**.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(1) TOWN AND VILLAGE GREENS/540. Requirement for registration.

540. Requirement for registration.

The Commons Registration Act 1965 made provision for the registration of all common land¹ and town or village greens² in England and Wales, together with the rights of common³ claimed over them and the ownership of them⁴. In the absence of registration, no land capable of being registered (apart from land newly becoming a common or green⁵) may be deemed to be common land or a town or village green; and no rights of common are exercisable over any such land unless they are registered⁶.

The Commons Registration Act 1965 is to be repealed and replaced by the Commons Act 2006⁷. At the date at which this volume states the law, the majority of the provisions of the Commons Registration Act 1965 relating to registration had been repealed in relation to pilot areas in England⁸, but remained in force in the remainder of England and in Wales⁹. When fully in force, Part 1 of the Commons Act 2006 will completely replace the provisions of the Commons Registration Act 1965, but at the date at which this volume states the law the majority of the provisions of Part 1 of the Commons Act 2006 were in force only in relation to the pilot areas in England¹⁰.

Part 1 of the Commons Act 2006 provides for commons registration authorities to continue to keep registers of common land and town or village greens, and permits amendments to be made to the registers in accordance with the provisions in that Part, replacing and improving the registration system under the Commons Registration Act 1965, but using the same registers prepared under that Act¹¹. The Commons Act 2006 not only replaces the general registration requirements, but also makes some specific provision for town or village greens¹².

1 As to common land generally see **COMMONS** vol 13 (2009) PARA 401 et seq. As to registration see **COMMONS** vol 13 (2009) PARA 506 et seq.

2 As to the essential characteristics of town and village greens at common law see PARA 535; and as to the meaning of 'town or village green' for registration purposes see PARA 532.

3 As to rights of common see **COMMONS** vol 13 (2009) PARA 431 et seq.

4 See **COMMONS** vol 13 (2009) PARA 506 et seq.

5 As to the registration of new common land or greens under the Commons Registration Act 1965 see s 13(b) (repealed); the Commons Registration (New Land) Regulations 1969, SI 1969/1843, reg 3(1); and **COMMONS** vol 13 (2009) PARAS 506, 516. See also *McLaren v Kubiak* [2007] EWHC 1065 (Ch), [2007] All ER (D) 191 (May).

6 See the Commons Registration Act 1965 s 1(2); and **COMMONS** vol 13 (2009) PARA 508.

7 As to the repealing provisions see the Commons Act 2006 Sch 6 Pt 1. As to the replacement provisions see Pt 1 (ss 1-25); and **COMMONS** vol 13 (2009) PARA 506 et seq.

8 As to the pilot areas in England see **COMMONS** vol 13 (2009) PARA 467.

9 See the Commons Act 2006 Sch 6 Pt 1; the Commons Act 2006 (Commencement No 4 and Savings) (England) Order 2008, SI 2008/1960, art 2(1)(h); and **COMMONS** vol 13 (2009) PARA 506.

10 See **COMMONS** vol 13 (2009) PARAS 403 note 7, 506.

11 As to registration under the Commons Act 2006 see **COMMONS** vol 13 (2009) PARA 521 et seq. As to the registers see **COMMONS** vol 13 (2009) PARA 526 et seq; and as to the registration authorities see **COMMONS** vol 13 (2009) PARA 507.

12 See PARA 541.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(1) TOWN AND VILLAGE GREENS/541. Registration of a green under the Commons Act 2006.

541. Registration of a green under the Commons Act 2006.

The Commons Act 2006 provides that any person may apply to the commons registration authority¹ to register land² as a town or village green³:

- 28 (1) in a case where: (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and (b) they continue to do so at the time of the application⁴;
- 29 (2) in a case where: (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; (b) they ceased to do so before the time of the application but after the commencement of these provisions; and (c) the application is made within the period of two years beginning with the cessation referred to in head (b)⁵; or
- 30 (3) in a case where: (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; (b) they ceased to do so before the commencement of these provisions; and (c) the application is made within the period of five years beginning with the cessation referred to in head (b)⁶.

The owner⁷ of any land may apply to the commons registration authority to register the land as a town or village green⁸, although such an application may only be made with the consent of any relevant leaseholder⁹ of, and the proprietor of any relevant charge¹⁰ over, the land¹¹. Subject to any provision made by or under Part 1 of the Commons Act 2006, an application for the registration of land as a town or village green must be granted¹².

Provision is made in the Commons Act 2006 to enable a commons registration authority to rectify the register where land which satisfies the relevant conditions has not been registered, or where land has been mistakenly registered, as a town or village green under the Commons Registration Act 1965¹³.

1 As to the registration authorities see **COMMONS** vol 13 (2009) PARA 507.

2 The land to which the Commons Act 2006 Pt 1 (ss 1-25) applies. Part 1 applies to all land in England and Wales, except the New Forest, Epping Forest or the Forest of Dean: s 5(1)-(3). For these purposes, 'land' includes land covered by water: s 61(1).

3 As to the essential characteristics of town and village greens at common law see PARA 535; and as to the meaning of 'town or village green' for registration purposes see PARA 532.

The appropriate national authority may by order amend any relevant Act so as to secure that: (1) a provision of that Act which is expressed to apply to a town or village green does not apply to land to which Pt 1 applies (see note 2) and which is not registered as a town or village green; (2) such a provision applies to either or both of the following: (a) land registered as a town or village green, or particular descriptions or areas of such land; (b) land to which Pt 1 does not apply, or particular descriptions or areas of such land: s 54(2). 'Appropriate national authority' is defined as meaning the Secretary of State, in relation to England, and the National Assembly for Wales, in relation to Wales: see s 61(1). However, the functions of the appropriate national authority in Wales under the Commons Act 2006 are now exercised by the Welsh Ministers. As to the Secretary of State and the Welsh Ministers see PARA 519.

4 Commons Act 2006 s 15(1), (2). In determining the period of 20 years referred to in heads (1)(a), (2)(a) and (3)(a) in the text, there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment: s 15(6). For the purposes of head (1)(b) in the text, in a case where the condition in head (1)(a) in the text is satisfied: (1) where persons indulge as of right in lawful sports and pastimes immediately before access to the land is so prohibited, those persons are to be regarded as continuing so to indulge; and (2) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land 'as of right': s 15(7).

5 Commons Act 2006 s 15(1), (3). See note 4.

6 Commons Act 2006 s 15(1), (4). See note 4. Section 15(4) does not apply in relation to any land where: (1) planning permission was granted before 23 June 2006 in respect of the land; (2) construction works were commenced before that date in accordance with that planning permission on the land or any other land in respect of which the permission was granted; and (3) the land (a) has by reason of any works carried out in accordance with that planning permission become permanently unusable by members of the public for the purposes of lawful sports and pastimes; or (b) will by reason of any works proposed to be carried out in accordance with that planning permission become permanently unusable by members of the public for those purposes: s 15(5).

7 For these purposes, references to the ownership or the owner of any land are references to the ownership of a legal estate in fee simple in the land or to the person holding that estate: Commons Act 2006 s 61(3)(a).

8 Commons Act 2006 s 15(8).

9 For these purposes, 'relevant leaseholder' means a leaseholder under a lease for a term of more than seven years from the date on which the lease was granted: Commons Act 2006 s 15(10).

10 For these purposes, 'relevant charge' means: (1) in relation to land which is registered in the register of title, a registered charge within the meaning of the Land Registration Act 2002 (see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 861); (2) in relation to land which is not so registered, a charge registered under the Land Charges Act 1972 (see **LAND CHARGES** vol 26 (2004 Reissue) PARA 601 et seq) or a legal mortgage, within the meaning of the Law of Property Act 1925 (see **MORTGAGE** vol 32 (2005 Reissue) PARA 304), which is not registered under the Land Charges Act 1972: Commons Act 2006 s 15(10). For these purposes, references to land registered in the register of title are references to land the fee simple of which is so registered: s 61(3)(b). 'Register of title' means the register kept under the Land Registration Act 2002 s 1 (see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 810): Commons Act 2006 s 61(1).

11 Commons Act 2006 s 15(9).

12 Commons Act 2006 s 24(4).

13 See PARAS 542-543.

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542. Power to rectify non-registration of a green.

If a commons registration authority¹ is satisfied that any land² not registered as a town or village green³ is land which:

- 31 (1) on 31 July 1970 was land allotted by or under any Act for the exercise or recreation of the inhabitants of any locality⁴;
- 32 (2) was not at any time finally registered as a town or village green under the Commons Registration Act 1965⁵;
- 33 (3) continues to be land allotted as specified in head (1)⁶;
- 34 (4) is land to which Part 1 of the Commons Act 2006 applies⁷; and
- 35 (5) satisfies such other conditions as regulations may specify⁸,

the authority must register the land as a town or village green in its register of town or village greens⁹. However, a commons registration authority may only register land under these provisions acting on: (a) the application of any person made before such date as regulations may specify; or (b) a proposal made and published by the authority before such date as regulations may specify¹⁰.

1 As to the registration authorities see **COMMONS** vol 13 (2009) PARA 507.

2 As to the meaning of 'land' see PARA 541 note 2.

3 As to the essential characteristics of town and village greens at common law see PARA 535; and as to the meaning of 'town or village green' for registration purposes see PARA 532.

4 Commons Act 2006 Sch 2 para 3(2)(a). At the date at which this volume states the law, Sch 2 para 3 had only been brought fully into force in the pilot areas in England. As to the pilot areas in England see **COMMONS** vol 13 (2009) PARA 467. Note that Sch 2 para 3 only applies to class (a) greens, as to which see PARAS 532, 537.

5 Commons Act 2006 Sch 2 para 3(2)(b). As to registration under the Commons Registration Act 1965 see PARA 532; and **COMMONS** vol 13 (2009) PARA 508 et seq.

6 Commons Act 2006 Sch 2 para 3(2)(c).

7 Commons Act 2006 Sch 2 para 3(2)(d). As to the land to which the Commons Act 2006 Pt 1 (ss 1-25) applies see PARA 541 note 2.

8 Commons Act 2006 Sch 2 para 3(2)(e). As to the regulations made see the Commons Registration (England) Regulations 2008, SI 2008/1961.

9 Commons Act 2006 Sch 2 para 3(1). For these purposes, any reference to a register of common land or town or village greens is to such a register kept under Pt 1: s 61(2)(b).

10 Commons Act 2006 Sch 2 para 3(3). An application under Sch 2 para 3 must be made on or before 31 December 2020: see the Commons Registration (England) Regulations 2008, SI 2008/1961, Sch 4 para 14. There is no fee for such an application: see Sch 5.

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543. Power to rectify the register where land is wrongly registered.

A commons registration authority¹ must remove any land² registered as common land³ from its register of common land and register it in its register of town or village greens⁴ if the authority is satisfied that the land is land to which the following provisions apply⁵. These provisions apply to land where: (1) the land was provisionally registered as common land⁶; (2) the provisional registration became final; but (3) immediately before its provisional registration the land was a town or village green within the meaning of the Commons Registration Act 1965 as originally enacted⁷. However, a commons registration authority may only so remove and register land acting on the application of any person made before such date as regulations may specify or on a proposal made and published by the authority before such date as regulations may specify⁸.

A commons registration authority must remove any land registered as a town or village green land from its register of town or village greens if the authority is satisfied that it is land to which the following provisions apply⁹. These provisions apply to land where: (a) the land was provisionally registered as a town or village green¹⁰; (b) on the date of the provisional registration the land was covered by a building or was within the curtilage of a building; (c) the provisional registration became final; and (d) since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building¹¹. However, a commons registration authority may only so remove land acting on the application of any person made before such date as regulations may specify or on a proposal made and published by the authority before such date as regulations may specify¹².

A commons registration authority must remove any land registered as a town or village green from its register of town or village greens if the authority is satisfied that the land is land to which the following provisions apply¹³. These provisions apply to land where: (i) the land was provisionally registered¹⁴; (ii) the provisional registration of the land as a town or village green was not referred to a Commons Commissioner¹⁵; (iii) the provisional registration became final; and (iv) immediately before its provisional registration the land was not either common land within the meaning of the Commons Registration Act 1965 or a town or village green¹⁶. However, a commons registration authority may only so remove land acting on the application of any person made before such date as regulations may specify or on a proposal made and published by the authority before such date as regulations may specify¹⁷.

1 As to the registration authorities see **COMMONS** vol 13 (2009) PARA 507.

2 As to the meaning of 'land' see PARA 541 note 2.

3 As to common land see generally **COMMONS**.

4 As to the essential characteristics of town and village greens at common law see PARA 535; and as to the meaning of 'town or village green' for registration purposes see PARA 532. As to the meaning of 'register' see PARA 542 note 9.

5 Commons Act 2006 Sch 2 para 5(1). At the date at which this volume states the law, Sch 2 para 5 had only been brought fully into force in the pilot areas in England. As to the pilot areas in England see **COMMONS** vol 13 (2009) PARA 467.

6 Ie under the Commons Registration Act 1965 s 4: see **COMMONS** vol 13 (2009) PARA 508.

7 Commons Act 2006 Sch 2 para 5(2).

8 Commons Act 2006 Sch 2 para 5(3). An application under Sch 2 para 5 in relation to the pilot areas must be made on or before 31 December 2020: see the Commons Registration (England) Regulations 2008, SI 2008/1961, Sch 4 para 14. There is no fee for such an application: see Sch 5.

9 Commons Act 2006 Sch 2 para 8(1). At the date at which this volume states the law, Sch 2 para 8 had only been brought fully into force in the pilot areas in England. As to the pilot areas in England see **COMMONS** vol 13 (2009) PARA 467.

10 le under the Commons Registration Act 1965 s 4: see **COMMONS** vol 13 (2009) PARA 508.

11 Commons Act 2006 Sch 2 para 8(2).

12 Commons Act 2006 Sch 2 para 8(3). An application under Sch 2 para 8 in relation to the pilot areas must be made on or before 31 December 2020: see the Commons Registration (England) Regulations 2008, SI 2008/1961, Sch 4 para 14. The fee for deregistration under this provision is £600, although the registration authority has power to substitute a different amount: see Sch 5.

13 Commons Act 2006 Sch 2 para 9(1). At the date at which this volume states the law, Sch 2 para 9 had only been brought fully into force in the pilot areas in England. As to the pilot areas in England see **COMMONS** vol 13 (2009) PARA 467.

14 le under the Commons Registration Act 1965 s 4: see **COMMONS** vol 13 (2009) PARA 508.

15 le under the Commons Registration Act 1965 s 5: see **COMMONS** vol 13 (2009) PARA 508. As to the Commons Commissioners see **COMMONS** vol 13 (2009) PARA 425.

16 Commons Act 2006 Sch 2 para 9(2). For the purposes of head (iv) in the text, land is to be taken not to have been a town or village green immediately before its provisional registration if (and only if): (1) throughout the period of 20 years preceding the date of its provisional registration the land was, by reason of its physical nature, unusable by members of the public for the purposes of lawful sports and pastimes; and (2) immediately before its provisional registration the land was not, and at the time of the application under Sch 2 para 9 still is not, allotted by or under any Act for the exercise or recreation of the inhabitants of any locality: Sch 2 para 9(3).

17 Commons Act 2006 Sch 2 para 9(4). An application under Sch 2 para 9 in relation to the pilot areas must be made on or before 31 December 2020: see the Commons Registration (England) Regulations 2008, SI 2008/1961, Sch 4 para 14. The fee for deregistration under this provision is £600, although the registration authority has power to substitute a different amount: see Sch 5.

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544. Offences etc in relation to town or village greens.

If any person wilfully causes any injury or damage to any fence of a town or village green¹, or wilfully and without lawful authority leads or drives any cattle or animal onto it, or wilfully lays any manure, soil, ashes, or rubbish, or other matter or thing onto it, or does any other act to the injury of the green, or to the interruption of its use or enjoyment as a place for exercise and recreation, he is, for every offence, liable on summary conviction² to a fine³ and to pay for any damage which he has occasioned⁴.

An encroachment⁵ on or inclosure⁶ of a town or village green, and any erection on or disturbance or interference with or occupation of the soil which is made otherwise than with a view to the better enjoyment of the green is deemed to be a public nuisance⁷.

It is also an offence without lawful authority to drive a mechanically propelled vehicle onto or upon a town or village green⁸ or to throw down, drop or otherwise deposit any litter⁹.

1 As to the essential characteristics of town and village greens at common law see PARA 535; and as to the meaning of 'town or village green' for registration purposes see PARA 532.

2 Ie upon the information of any churchwarden or overseer, or any inhabitant, of the parish in which the green is situate or of the person in whom the soil of the green is vested: Inclosure Act 1857 s 12; Commons Act 1876 s 29. References in the Inclosure Act 1857 s 12 to a churchwarden or overseer of the parish in which the green is situate are to be construed: (1) with respect to a green in a parish, as references to the parish council or, where there is no parish council, the parish meeting; (2) with respect to a green in a community where there is a community council, as references to that council; (3) with respect to any other green, as references to the council of the district or Welsh principal area in which the green is situated: Local Government Act 1972 s 189(3) (amended by the Local Government (Wales) Act 1994 Sch 15 paras 1, 38). As to areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

3 Ie a fine not exceeding level 1 on the standard scale: see the Inclosure Act 1857 s 12 (amended by the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

4 See the Inclosure Act 1857 s 12 (as amended: see note 3).

5 The Commons Act 1876 s 29 provides that it is only to apply where a town or village green has a known and defined boundary. However, under the Commons Registration (General) Regulations 1966, SI 1966/1471, regs 4 and 31, the Commons Registration (New Land) Regulations 1969, SI 1969/1843, regs 7 and 10, and the Commons Registration (England) Regulations 2008, SI 2008/1961, regs 5, 9 and 19 all registrations and all applications for registration of town or village greens are defined on a map. It appears that land only acquires the status of a town or village green on registration: see *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25 at [45] et seq, [2006] 2 AC 674 at [45] et seq, [2006] 4 All ER 817 at [45] et seq per Lord Hoffman. Accordingly all greens will now have defined boundaries.

6 As to inclosure see **COMMONS** vol 13 (2009) PARA 418 et seq.

7 Commons Act 1876 s 29 (amended by the Statute Law Revision Act 1894). As to public nuisances see **NUISANCE** vol 78 (2010) PARAS 105, 187 et seq. As to animals straying on to the highway from a town or village green see the Animals Act 1971 s 8; and **ANIMALS** vol 2 (2008) PARA 754; **COMMONS** vol 13 (2009) PARA 579.

8 See the Road Traffic Act 1988 s 34; and **COMMONS** vol 13 (2009) PARA 582; **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 1007. The offence created by the Road Traffic Act 1988 s 34 extends to driving on 'common land . . . or land of any other description', which for these purposes includes town or village greens: see *Massey v Boulden* [2002] EWCA Civ 1634, [2003] 2 All ER 87, [2003] 1 WLR 1792 (disapproved, in so far as deciding that user in breach of the Road Traffic Act 1988 s 34(1) was a bar to the acquisition of an easement by prescription, in *Bakewell Management Ltd v Brandwood* [2004] UKHL 14, [2004] 2 AC 519, [2004] 2 All ER 305).

9 See the Environmental Protection Act 1990 s 87; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 721.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(2) TOWN GARDENS/545. Application of enactments.

(2) TOWN GARDENS

545. Application of enactments.

The Town Gardens Protection Act 1863 applies to any enclosed garden or ornamental ground in an area¹ set apart, otherwise than by the revocable permission of the owner², in any public square, crescent, circus, street or other public place for the use and enjoyment of its inhabitants³. There must be a legal right in the inhabitants or some of them to such use and enjoyment, a de facto use and enjoyment not being sufficient⁴.

1 le in any city or borough: see the Town Gardens Protection Act 1863 s 1(1) (renumbered by virtue of SI 1992/3292). All boroughs outside Greater London were abolished as from 1 April 1974 (see the Local Government Act 1972 s 1(10); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 5) and, although the styles of cities and boroughs have been conferred by royal charter (see s 245(1); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 25) upon districts created by that Act, they must not be treated as boroughs for the purposes of Acts passed before 1 April 1974 (see s 245(5); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 25). Therefore, it seems that 'city or borough' in the Town Gardens Protection Act 1863 must now refer to an area which was a city or borough before 1 April 1974 or else the powers have lapsed.

2 A covenant to keep lands for the use and enjoyment of the inhabitants of a district which can be released by the covenantee cannot be said to be irrevocable: see *Tulk v Metropolitan Board of Works* (1868) LR 3 QB 94 at 117-118 per Cockburn CJ; affd LR 3 QB 682, Ex Ch.

3 See the Town Gardens Protection Act 1863 s 1(1) (as renumbered: see note 1). The Town Gardens Protection Act 1863 does not extend to Crown land or to land managed by the Secretary of State or regulated under any statute: s 7 (amended by the Statute Law Revision Act 1893). The Town Gardens Protection Act 1863 s 7 refers to the Commissioners of Works, whose functions have been transferred to the Secretary of State. As to the Secretary of State, and as to the transfer of functions in respect of Wales to the Welsh Ministers, see PARA 519.

4 *Tulk v Metropolitan Board of Works* (1868) LR 3 QB 682 at 688, Ex Ch.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(2) TOWN GARDENS/546. Powers of authorities.

546. Powers of authorities.

Where any person, in respect of any house or other property, can require that any town garden be maintained or not be built upon, and he requests in writing the authority for the protection of town gardens (the 'protection authority'¹) to protect that right, the authority may accede to that request². Thereupon the rights of that person vest in the protection authority, and it can, in its own name, exercise all his rights in relation to that town garden, and take legal proceedings in respect of those rights³.

Where any town garden has been neglected, the protection authority must take charge of it⁴, and if after due inquiry the freehold owner cannot be found, or if it is vested in any person subject to a condition for keeping the garden as garden or pleasure ground, or that the garden must not be built upon, the protection authority must, if so requested by a majority of two-thirds of the owners and occupiers of surrounding houses, vest it in a committee of the taxable inhabitants of those houses⁵ in order that it may be kept as a garden or ornamental ground for the use of those inhabitants⁶.

If the owners and occupiers do not agree to undertake the charge of the garden, the protection authority must vest it in the local authority⁷ to be maintained as an open place or street for the advantage of the public, subject to the approval of the protection authority⁸.

1 The Town Gardens Protection Act 1863 refers to the 'corporate authorities' in any city or borough: see s 1(1) (amended by SI 1965/654; and renumbered and amended by SI 1992/3292). It is thought that the powers under the Town Gardens Protection Act 1863 exercisable by corporate authorities are now exercisable in London by the Common Council of the City of London or London borough councils, and elsewhere in England by district councils (which may be city councils), or in Wales by county or county borough councils: see the London Government Order 1965, SI 1965/654, art 3(1); the Local Government Act 1972 s 1(9), (10); the Local Government Act 1985 s 1; and the Local Government (Wales) Act 1994 Sch 1. District councils or borough councils in areas which were not boroughs before 1 April 1974 are, however, thought not to have powers under the Town Gardens Protection Act 1863: see PARA 545 note 1. As to the reorganisation of local government in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 5 et seq.

2 See the Town Gardens Protection Act 1863 s 2 (amended by the Statute Law Revision Act 1893; and SI 1965/654).

3 See the Town Gardens Protection Act 1863 s 2 (as amended: see note 2). See also *Re Hackney Borough Council's Application* (1957) 7 P & CR 37.

4 See the Town Gardens Protection Act 1863 s 1(1) (as renumbered and amended: see note 1). The authority must put up a notice to that effect: s 1(1) (as so renumbered and amended). The authority's powers are subject to all such rights as any person would have enjoyed had the Town Gardens Protection Act 1863 not been passed: s 1(1) (as so renumbered and amended).

5 The committee must consist of not more than nine nor fewer than three of the taxable inhabitants of the houses to be chosen annually by such inhabitants: Town Gardens Protection Act 1863 s 1(1) (as renumbered and amended: see note 1). 'Taxable inhabitants' means those persons who are liable to pay council tax in respect of any of the houses which are chargeable dwellings for the purposes of the Local Government Finance Act 1992 Pt I (ss 1-19) (see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 237); Town Gardens Protection Act 1863 s 1(2) (added by SI 1992/3292). The expenses of the committee may be raised by the local authority: see the Town Gardens Protection Act 1863 s 1(1) (as so renumbered and amended); and see also note 7.

6 Town Gardens Protection Act 1863 s 1(1) (as renumbered: see note 1). There is also a duty to remove encroachments made within the period of 20 years before 4 May 1863 (ie the date the Town Gardens Protection Act 1863 received the Royal Assent): see s 1(1) (as so renumbered).

7 The Town Gardens Protection Act 1863 s 1 refers to the 'vestry or board' of every parish or district. Subsequent legislation (ie the London Government Act 1899 s 4 (repealed); the London Government Act 1963 Sch 1 Pt I; the Local Law (Greater London Council and Inner London Boroughs) Order 1965, SI 1965/540, art 5, Sch 3 (repealed); and the London Government Order 1965, SI 1965/654, art 3(1)(a)) makes provision as to the transfer of the functions of those bodies in London to the Common Council of the City of London and the London boroughs. Elsewhere in England the functions of vestries in urban parishes were transferred to the borough or urban district council by the Local Government Act 1933 s 269 (repealed), and these authorities ceased to exist as from 1 April 1974, the functions of urban district councils being transferred to district councils: see the Local Government Act 1972 ss 1, 179(3); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 579. In Wales the functions formerly exercised by district councils are now exercised by county or county borough councils: see the substituted s 20; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 37. If part of the garden is situated in one city or borough and part in another, the authority for these purposes is the authority of the city or borough within which the part in question is situated: see the Town Gardens Protection Act 1863 s 1(1) (as renumbered and amended: see note 1). As to the powers of local authorities in respect of open spaces so vested in them see the Open Spaces Act 1906 s 12, applying the powers conferred by that Act; and PARA 577.

8 Town Gardens Protection Act 1863 s 1(1) (as renumbered and amended: see note 1). The vesting must be within six months after the notice (see note 4) has been put up, or within such further time as the protection authority may allow: s 1(1) (as so renumbered and amended).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(2) TOWN GARDENS/547. Byelaws by committees of inhabitants.

547. Byelaws by committees of inhabitants.

A committee of inhabitants appointed to manage a town garden¹ may make, revoke and alter byelaws for its management and preservation².

An inhabitant, or person admitted to the garden by an inhabitant, offending against any such byelaw commits an offence³.

¹ See PARA 546.

² See the Town Gardens Protection Act 1863 s 4 (amended by the Statute Law (Repeals) Act 1993; and the Criminal Justice Act 1982 s 46). The byelaws must be judicially approved: see s 4 (as so amended); Courts Act 1971 Sch 1 (repealed). The byelaws must be entered in a book kept for that purpose, and signed by the chairman of the meeting at which they were passed; the book is evidence of such byelaws: Town Gardens Protection Act 1863 s 4 (as so amended). Where a local Act required that the committee should consist of male inhabitant householders it was held that the Sex Disqualification (Removal) Act 1919 s 1 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 904) entitled women householders to be appointed to the committee: *Re Edwardes Square Garden Committee, Smith v Mitchell* (1934) 51 TLR 35.

³ Town Gardens Protection Act 1863 s 4 (as amended: see note 2). Such a person is liable for each offence to a penalty not exceeding level 1 on the standard scale: s 4 (as so amended). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(2) TOWN GARDENS/548. Apprehension of offenders; penalties.

548. Apprehension of offenders; penalties.

Any person who throws any rubbish into any town garden, or trespasses there, or gets over the railings or fence, or steals or damages the flowers or plants, or commits any nuisance there, is guilty of an offence¹.

¹ Town Gardens Protection Act 1863 s 5 (amended by the Criminal Justice Act 1982 s 46; the Police and Criminal Evidence Act 1984 Sch 6 Pt I para 5; and the Statute Law (Repeals) Act 1993). A person is liable on summary conviction for each offence to a penalty not exceeding level 1 on the standard scale or to imprisonment for a term not exceeding 14 days: s 5. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As from a day to be appointed, such a person will no longer be liable to a term of imprisonment: s 5 (as so amended; and prospectively amended by the Criminal Justice Act 2003 Sch 37 Pt 9). At the date at which this volume states the law, no such day had been appointed.

In case it is necessary to state in any proceedings the ownership of the property of any town garden, flowers, or plants, it is sufficient to describe the same as the property of the committee by the name of AB and others: Town Gardens Protection Act 1863 s 5 (as so amended).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(3) RECREATION GROUNDS/549. Setting out and vesting.

(3) RECREATION GROUNDS

549. Setting out and vesting.

A provisional order for inclosure¹ could include as one of the terms and conditions of such inclosure the appropriation of allotments for the exercise and recreation of the inhabitants of a neighbourhood². Allotments for recreation grounds made between 1845 and 1876 were either awarded to and vested in the churchwardens and overseers of the parish to be held in trust as places of exercise and recreation for the inhabitants of the parish and neighbourhood or were allotted to some person entitled to an allotment, who consented to receive the allotment as part of his allotment charged with the obligation of keeping it in order and of permitting it to be used for purposes of recreation, the allottee receiving the benefit of the herbage³. The Commons Act 1876, however, repealed the power of so allotting a recreation allotment and directed that all allotments for the purpose of a recreation ground made after the passing of that Act⁴ should be vested in the churchwardens and overseers of the parish, to be held by them as provided by the Inclosure Acts⁵.

1 In this title 'inclosure' is generally used as meaning a legal process involving the extinction of common rights, as opposed to the enclosure of land with fences or walls. See the *Report of the Royal Commission on Common Land 1955-1958* (Cmnd 462) App III para 29. As to inclosure generally see **COMMONS** vol 13 (2009) PARA 418 et seq.

2 See the Inclosure Act 1845 s 30 (repealed). As to allotments for field gardens and as to those for the supply of fuel and materials for road repairs see **AGRICULTURAL LAND** vol 1 (2008) PARA 511 et seq. As to the power of the Charity Commission to make schemes relating to allotments see **AGRICULTURAL LAND** vol 1 (2008) PARA 519. As to charitable schemes generally see **CHARITIES** vol 8 (2010) PARA 177 et seq; and as to the Charity Commission see **CHARITIES** vol 8 (2010) PARA 538 et seq. See also PARA 539.

3 See the Inclosure Act 1845 ss 73, 74 (as originally enacted).

4 The Commons Act 1876 was passed, ie received Royal Assent, on 11 August 1876.

5 See the Commons Act 1876 s 25 (repealed by the Statute Law Revision Act 1894 as unnecessary in consequence of the transfer of the powers, duties, and liabilities of the churchwardens and overseers (including those relating to recreation allotments) to the parish council by the Local Government Act 1894 s 6(1)(c)(iii) (see PARA 538)). Allotments for recreation grounds are now administered by local authorities: see PARA 550 et seq. As to the Inclosure Acts see **COMMONS** vol 13 (2009) PARA 419 note 2.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(3) RECREATION GROUNDS/550. Fencing, repair and land management.

550. Fencing, repair and land management.

Recreation allotments¹ were in the first instance to be fenced² and, if necessary, drained and levelled by the valuer, the expense being part of the expense of the inclosure³. The local authority in which the powers and duties in this respect are now vested⁴ is required to maintain and repair the fences and to keep the surface drained and level⁵, these works being funded either by application of the rents received for letting the grass and herbage of the allotment⁶, or out of the council tax⁷, or otherwise⁸.

Any surplus rent received for letting the grass and herbage of recreation allotments⁹ is to be expended:

- 36 (1) in improving the recreation grounds in the parish (or, in Wales, community)¹⁰ or neighbourhood, or in maintaining the drainage and fencing thereof, or in hiring or purchasing additional land for recreation grounds in the parish (or community) or neighbourhood¹¹;
- 37 (2) in the improvement of the field gardens in the parish (or community) or neighbourhood¹²; or
- 38 (3) towards the redemption of any tithe redemption annuity or other charge on the recreation grounds¹³.

1 As to the setting out and vesting of recreation allotments see PARA 549.

2 The fencing of the allotment could be dispensed with in certain circumstances: see the Inclosure Act 1852 s 14.

3 See the Inclosure Act 1845 s 73 (as originally enacted). As to the meaning of 'inclosure' see PARA 549 note 1. As to inclosure generally see **COMMONS** vol 13 (2009) PARA 418 et seq.

4 See **COMMONS** vol 13 (2009) PARA 426.

5 Inclosure Act 1845 s 73 (amended by the Statute Law Revision Act 1891; and the Statute Law (Repeals) Act 1998).

6 As to the power to let the grass and herbage see the Inclosure Act 1845 s 73 (as amended: see note 5).

7 The council tax is the successor to the poor rate, to which reference is made in the Inclosure Act 1845 s 73: see further **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 2.

8 Inclosure Act 1845 s 73 (as amended: see note 5).

9 See the text and note 6.

10 The Commons Act 1876 s 27 refers only to a parish, but this should be read as referring to a parish in England or a community in Wales. As to areas and authorities in England and Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

11 Commons Act 1876 s 27 (amended by the Statute Law Revision Act 1894). For the power of local authorities to purchase, take on lease, lay out, plant, improve and maintain recreation grounds see the Public Health Act 1875 s 164; the Local Government Act 1972 Sch 14 para 27(1), (2)(a); and PARA 556. For the power of local authorities to use such grounds for entertainments, etc, see the Public Health Acts Amendment Act 1890 s 44; the Public Health Act 1961 s 53; the Local Government Act 1972 Sch 14 para 27(1), (2)(b); and PARA 555 et seq. See also **LOCAL GOVERNMENT** vol 69 (2009) PARAS 595-596. As to the protection of such grounds from encroachment and injury see PARA 552.

- 12 See the Commons Act 1879 s 2.
- 13 See the Commons Act 1899 s 16.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(3) RECREATION GROUNDS/551. Exchange and sale.

551. Exchange and sale.

Recreation allotments¹ may be exchanged for other land where such land appears to be more suitable for the purpose². Such an exchange is permissible only where it appears to the Secretary of State or the Welsh Ministers³ that a recreation allotment is, for whatever reason, unsuitable or inconvenient for the purpose, where another person is willing to exchange land for the allotment, and where the local authority⁴ is of the opinion that the exchange would be beneficial for the purposes for which the allotment was originally set out⁵. The trustees of any recreation ground may also apply for such an exchange⁶ and may, with the approval of the Secretary of State or the Welsh Ministers, sell all or any part of the allotment vested in them and out of the proceeds purchase other suitable land for the same purpose⁷.

1 As to the setting out and vesting of recreation allotments see PARA 549.

2 Inclosure Act 1845 s 149 (amended by the Statute Law Revision Act 1891).

3 Powers under the Inclosure Act 1845 s 149 (see the text and note 2) and the Commons Act 1876 s 27 (see PARA 550) were originally vested in the Inclosure Commissioners but are now exercisable by the Secretary of State or the Welsh Ministers: see PARA 519; and **COMMONS** vol 13 (2009) PARA 423 note 3.

4 As to the local authority for these purposes see **COMMONS** vol 13 (2009) PARA 426.

5 Inclosure Act 1845 s 149 (as amended: see note 2).

6 Inclosure Act 1845 s 149 (as amended: see note 2).

7 Commons Act 1876 s 27. See note 3. No such sale may be sanctioned unless it is proved that such land can and will be forthwith purchased: s 27.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(3) RECREATION GROUNDS/552. Offences in respect of recreation allotments, and user.

552. Offences in respect of recreation allotments, and user.

Any person who wilfully does any injury or damage to any fence of a recreation allotment¹, or wilfully and without lawful authority leads or drives any cattle or animal onto it, or wilfully lays any manure, soil, ashes or rubbish, or other matter or thing onto it, or does any other act to the injury of the land, or to the interruption of its use or enjoyment as a place for exercise and recreation, is liable to summary prosecution, and on conviction is liable to pay both damages and a penalty². Similarly, any erection on, or disturbance or interference with, a recreation ground made otherwise than with a view to its better enjoyment is deemed to be a public nuisance³. It is also an offence without lawful authority to drive a mechanically propelled vehicle onto or upon a recreation ground⁴ or to deface any place in the open air by the unauthorised deposit of litter⁵. It is unlawful to authorise the use of or to use any recreation allotment for any purposes other than those declared by the Commons Act 1876 and the award, or either of them, under which the allotment was set out, notwithstanding anything contained in any other Act⁶, although any provisions with reference to recreation allotments or with respect to their management contained in any Inclosure Act or award may, on the application of the local authority interested⁷, be dealt with by a scheme of the Charity Commission⁸ in the exercise of its ordinary jurisdiction, and modified⁹.

1 ie any land allotted and awarded under the Inclosure Acts as a place for exercise and recreation: Inclosure Act 1857 s 12 (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the Inclosure Acts see **COMMONS** vol 13 (2009) PARA 419 note 2. As to the use of the terms 'inclose', 'inclosure' etc see PARA 549 note 1. As to inclosure generally see **COMMONS** vol 13 (2009) PARA 418 et seq. As to the setting out and vesting of recreation allotments see PARA 549.

2 See the Inclosure Act 1857 s 12 (as amended: see note 1). Such a penalty must not exceed level 1 on the standard scale: s 12 (as so amended). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

3 Commons Act 1876 s 29 (amended by the Statute Law Revision Act 1894). This only applies, however, where the recreation ground has a known and defined boundary: Commons Act 1876 s 29 (as so amended).

4 See the Road Traffic Act 1988 s 34(1) (substituted by the Countryside and Rights of Way Act 2000 Sch 7 para 5). It is not an offence for a person with an interest in land, or a visitor to any land, to drive a mechanically propelled vehicle on a road if, immediately before 2 May 2006 (ie the commencement of the Countryside and Rights of Way Act 2000 s 47(2)), the road was shown in a definitive map and statement as a road used as a public path, and in use for obtaining access to the land by the driving of mechanically propelled vehicles by a person with an interest in the land or by visitors to the land: Road Traffic Act 1988 s 34(2A) (added by the Natural Environment and Rural Communities Act 2006 s 70(2), (4)). See also *Massey v Boulden* [2002] EWCA Civ 1634, [2003] 2 All ER 87, [2003] 1 WLR 1792; *Bakewell Management Ltd v Brandwood* [2004] UKHL 14, [2004] 2 AC 519, [2004] 2 All ER 305.

5 See the Environmental Protection Act 1990 s 87(1), (3), (5); and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 717 et seq.

6 Commons Act 1876 s 19 (amended by the Statute Law Revision Act 1894; and the Charities (Fuel Allotments) Act 1939 s 1(3)). This provision, however, is not in derogation of the powers of exchange and sale (see PARA 551), as the substituted lands will be used for the original purposes.

7 As to these authorities see **COMMONS** vol 13 (2009) PARA 426.

8 As to the Charity Commission see **CHARITIES** vol 8 (2010) PARA 538 et seq.

9 Commons Act 1899 s 18 (amended by the Charities Act 2006 Sch 8 para 10).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(3) RECREATION GROUNDS/553. Periodical reports.

553. Periodical reports.

Local authorities¹ are required to make reports to the Secretary of State or the Welsh Ministers² at intervals of not less than three or more than five years in respect of the recreation grounds³ under their management, with such particulars of the rents received as may be required by the Secretary of State or the Welsh Ministers⁴.

1 As to local authorities for these purposes see **COMMONS** vol 13 (2009) PARA 426.

2 Powers under the Commons Act 1876 s 28 were originally vested in the Inclosure Commissioners but are now exercisable by the Secretary of State or the Welsh Ministers: see PARA 519; and **COMMONS** vol 13 (2009) PARA 423 note 3.

3 As to the setting out and vesting of recreation allotments see PARA 549.

4 Commons Act 1876 s 28. As to the uses to which rents may be put see PARA 550.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(3) RECREATION GROUNDS/554. Recreation grounds etc.

554. Recreation grounds etc.

Where a recreation ground or field garden allotted under the Inclosure Acts¹ is taken under compulsory powers, the compensation money payable is to be applied in the manner provided by the Inclosure Acts with respect to the surplus rents arising from recreation grounds and field gardens respectively².

¹ As to the Inclosure Acts see **COMMONS** vol 13 (2009) PARA 419 note 2.

² See the Commonable Rights Compensation Act 1882 s 3. As to the application of these rents see also PARA 550.

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(4) PUBLIC PLEASURE GROUNDS

555. Authorities having power to act.

The local authorities empowered to provide public walks or pleasure grounds under the Public Health Acts 1875 to 1925¹ are a county council, a district council, a parish or community council, a county borough council, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple, the Under Treasurer of the Middle Temple and the Council of the Isles of Scilly².

¹ See the Public Health Acts 1875 to 1907 and the Public Health Act 1925 Pts I-VIII (ss 1-76): Public Health Act 1925 s 1(2) (amended by the Public Health Act 1936 Sch 3 Pt IV); and see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH**. The power to provide country parks under the Countryside Act 1968 s 7 (see PARA 566) does not apply to the provisions relating to public walks and pleasure grounds under the Public Health Act 1875 s 164 (see PARA 556); the Public Health Acts Amendment Act 1890 s 44 (see PARA 558) or s 45 (see PARA 556); the Public Health Acts Amendment Act 1907 s 76 (see PARA 559) or s 77 (see PARA 559); or the Public Health Act 1925 s 56(5) (see PARA 558): see the Countryside Act 1968 s 7(7).

² See the enactments cited in note 1; the Public Health Act 1961 s 2(3) (amended by the Local Government Act 1972 Sch 30; and the London Government Act 1963 Sch 11 Pt I para 33); the Public Health Act 1961 ss 52-54; the London Government Act 1963 s 40(1), (2), (4)(a), (b), (h) (s 40(2) amended by the Local Government Act 1985 Sch 17); the London Government Act 1963 Sch 11 Pt I paras 1, 2; the Local Government Act 1972 s 180(1), (3)(a), (c), (h) (s 180(1) amended by the Local Government (Wales) Act 1994 Sch 15 paras 1, 35); the Local Government Act 1972 s 270(1) (amended by the Local Government Act 1985 Sch 17; and the Local Government (Wales) Act 1994 s 1(4)-(8), Sch 15 paras 1, 57); the Local Government Act 1972 Sch 14 paras 27, 42; the Isles of Scilly (Functions) Order 1979, SI 1979/72, art 3(a); and **LOCAL GOVERNMENT**. The enactments cited in note 1 were formerly of limited application but now extend to local authorities throughout England and Wales including Greater London: see the Public Health Act 1961 ss 52-54; the London Government Act 1963 s 40; the Local Government Act 1972 Sch 14 paras 23, 42; and **LOCAL GOVERNMENT; ENVIRONMENTAL QUALITY AND PUBLIC HEALTH**. As to the Council of the Isles of Scilly see **LOCAL GOVERNMENT**.

As to a local authority's power to appropriate land to other uses see the Local Government Act 1972 s 122; *R (on the application of Beresford) v Sunderland City Council* [2003] UKHL 60 at [27]-[31], [2004] 1 AC 889 at [27]-[31], [2004] 1 All ER 160 at [27]-[31] per Lord Scott of Foscote; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 513.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(4) PUBLIC PLEASURE GROUNDS/556. Powers of authorities.

556. Powers of authorities.

A local authority¹ may purchase or take on lease, lay out, plant, improve² and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute³ to the support of public walks or pleasure grounds provided by any person⁴. A local authority may make byelaws for the regulation of any such public walk or pleasure ground and may by such byelaws provide for the removal of persons infringing the byelaws⁵. The authority may not use a public pleasure ground provided by it, or permit it to be used, for any purpose inconsistent with public recreation⁶, subject to certain statutory exceptions⁷. The authority is not the occupier of the land, but merely its custodian or trustee on behalf of the public; it may not remove anyone who is not breaking the general law or any applicable byelaw, and consequently the authority is not liable for nuisance caused by persons on the land who are not acting in breach of the byelaws⁸.

If it appears to a local authority that a park or pleasure ground can suitably be used as a country park, then, from such date as the local authority may determine, it must be so treated⁹.

1 As to the meaning of 'local authority' see PARA 555.

2 See *A-G v Sunderland Corpn* (1876) 2 ChD 634 at 642, CA, per Mellish LJ; and see also *A-G v Leeds Corpn* (1880) 24 Sol Jo 539 per Jessel MR; *A-G v Bradford Corpn* (1911) 75 JP 553.

3 The powers of contribution under the Public Health Acts Amendment Act 1890 are wider: see s 45. As to the power of joint action between local authorities and the National Trust see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 984.

4 Public Health Act 1875 s 164. If necessary the ground may be acquired compulsorily: see the Local Government Act 1972 s 121; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 510. As to the power of appropriation of land see the Local Government Act 1972 ss 122, 123; the New Towns Act 1981 s 21(1); *R (on the application of Beresford) v Sunderland City Council* [2003] UKHL 60 at [27], [52], [2004] 1 AC 889 at [27], [52], [2004] 1 All ER 160 at [27], [52] per Lord Scott of Foscote (in the circumstances of this case it was held that a green had been established, but it was left open whether this might be overcome by the use of appropriation powers); and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 513, 515; **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1371. As to the recovery of land acquired under the Public Health Act 1875 s 164 which has been let to an agricultural tenant in order to enable it to be used as a public walk or pleasure ground see *Teignmouth UDC v Elliott* (1958) 108 L Jo 204. As to restrictions on the operation of notices to quit given to tenants of agricultural holdings see **AGRICULTURAL LAND** vol 1 (2008) PARAS 373-384. A local authority may erect a caretaker's house where necessary for the proper maintenance of an open space: see *A-G v Poole Corpn* [1936] 3 All ER 852; affd on appeal [1938] Ch 23, [1937] 3 All ER 608, CA. As to dedication to the public see *Blake (Valuation Officer) v Hendon Corpn* [1962] 1 QB 283, [1961] 3 All ER 601, CA.

5 Public Health Act 1875 s 164. A local authority may by such byelaws provide for the removal of any person infringing any such byelaw by any officer of the local authority or a constable: s 164. As to the powers of local authorities relating to byelaws and their confirmation, and as to byelaws relating to public places generally, see **LOCAL GOVERNMENT**. As to the validity of byelaws generally see *Kruse v Johnson* [1898] 2 QB 91, DC. As to the reasonableness of byelaws relating to open spaces, recreation grounds and similar places see *Torquay Local Board v Bridle* (1882) 47 JP 183, DC (fowls); *Harper v Michell* (1879) 44 JP 378, DC (bird catching); *Nash v Manning* (1894) 58 JP 718, DC (standing vehicles); *Gray v Sylvester* (1897) 61 JP 807; *Parker v Bournemouth Corpn* (1902) 66 JP 440, DC; *Williams v Weston-super-Mare UDC* (1907) 72 JP 54, DC; *Moorman v Tordoff* (1908) 72 JP 142, DC (hawkers); *Parker v Clegg* (1903) 2 LGR 608, DC; *Pelham v Littlehampton UDC* (1898) 63 JP 88 (bathing machines); *Southend-on-Sea Corpn v Davis* (1900) 16 TLR 167, DC (street music); *De Morgan v Metropolitan Board of Works* (1880) 5 QBD 155, DC (public speaking on unenclosed land); *Kitson v Ashe* [1899] 1 QB 425, DC (street betting); *Nash v Finlay* (1901) 85 LT 682, DC; *Slee v Meadows* (1911) 75 JP 246, DC (Salvation Army services); *Mitcham Common Conservators v Cox, Mitcham Common Conservators v Cole* [1911] 2 KB 854, DC (golf on common); *A-G v Hodgson* [1922] 2 Ch 429 (motor vehicles in public park); *Burnley Borough Council v England* (1978) 77 LGR 227, (1978) Times, 15 July (dogs in park).

6 See *A-G v Southampton Corpn* (1859) 1 Giff 363 (cattle fair not allowed; cf the Public Health Acts Amendment Act 1890 s 44 (see PARA 558)); *A-G v Sunderland Corpn* (1876) 2 ChD 634, CA (erection of town hall and school of art not allowed; a free library, museum, and conservatory bona fide intended for the use of persons frequenting its grounds allowable); *A-G v Bray Township Comrs* (1880) 5 LR Ir 254, CA (lease of land for the erection of a pavilion and bathing place being part of land acquired 'as a public place of recreation and exercise on foot' allowed). See also *A-G v Hanwell UDC* [1900] 2 Ch 377 at 386-387, CA, per Collins LJ; *A-G v Teddington UDC* [1898] 1 Ch 66; *A-G v Bradford Corpn* (1911) 75 JP 553 (street widening).

7 See the Public Health Acts Amendment Act 1890 s 44(1); and PARA 558.

8 *Hall v Beckenham Corpn* [1949] 1 KB 716, [1949] 1 All ER 423. As to liability in nuisance generally see **NUISANCE**.

9 See the Countryside Act 1968 s 7(5). This does not affect any trust, covenant or other restriction to which the park or pleasure ground is subject: s 7(5)(a). No grant is payable under the Countryside Act 1968 in respect of expenditure before the date of determination: s 7(5)(b). As to country parks see PARA 566.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(4) PUBLIC PLEASURE GROUNDS/557. Temporary adaptation of land.

557. Temporary adaptation of land.

A local authority¹ may temporarily adapt as a public pleasure ground part of a piece of land bought, but not immediately required, for another purpose, instead of selling it as superfluous land². Such land must not permanently be diverted from the purpose for which it was originally acquired³, and the acquisition of rights over it inconsistent with such purpose must be prevented⁴.

1 As to the meaning of 'local authority' see PARA 555.

2 *A-G v Teddington UDC* [1898] 1 Ch 66. As to the appropriation or disposal of superfluous land see the Local Government Act 1972 ss 122, 123; the New Towns Act 1981 s 21(1); *R (on the application of Beresford) v Sunderland City Council* [2003] UKHL 60 at [27], [52], [2004] 1 AC 889 at [27], [52], [2004] 1 All ER 160 at [27]-[52] per Lord Scott of Foscote (in the circumstances of this case it was held that a green had been established, but it was left open whether this might be overcome by the use of appropriation powers); and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 513, 515; **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1371.

3 *A-G v Teddington UDC* [1898] 1 Ch 66; *A-G v Hanwell UDC* [1900] 2 Ch 377, CA.

4 *A-G v Teddington UDC* [1898] 1 Ch 66 at 70 per Romer J; cf the Local Government Act 1972 s 122 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 513); and the Housing Act 1985 s 291 (see **HOUSING** vol 22 (2006 Reissue) PARA 428).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(4) PUBLIC PLEASURE GROUNDS/558. Powers of closing and charging for admission.

558. Powers of closing and charging for admission.

A local authority¹ has no general power of charging for admission to² or of closing any public walk or pleasure ground³ but there is an express statutory power to charge reasonable sums for the use of any part of the park or ground which has been set apart by the local authority for the purpose of cricket, football or any other game or recreation⁴ and limited powers of closing and charging for admission may be obtained⁵. A local authority has power to provide such recreational facilities as it thinks fit⁶ and may make any facilities provided by it in pursuance of that power available for use by such persons as the authority thinks fit either without charge or on payment of such charges as the authority thinks fit⁷. If the ground is an enclosed space which can only be entered by gates, the exclusion of the public at night may be provided for by byelaws⁸.

The authority may on such days as it thinks fit, not exceeding 12 in any year nor more than six days in succession, and not being Sundays, allow a public park or pleasure ground provided by it, or part of one, to be used by a public charity or institution, or use it, or allow it to be used, for any agricultural, horticultural or other show, or any other public purpose, and may charge, or allow a charge to be made, for admission on such days⁹. However, this power is restricted on certain days¹⁰. Furthermore, for the purpose of protecting ice for skating the authority may enclose during time of frost any part of a park or ground and charge for admission to the part enclosed¹¹.

1 As to the meaning of 'local authority' see PARA 555.

2 *A-G v Leeds Corpn* (1880) 24 Sol Jo 539 (where it was held that such a charge could only be justified by an express provision contained in a local Act); and as to local authority charging generally see *McCarthy and Stone (Developments) Ltd v Richmond upon Thames London Borough Council* [1992] 2 AC 48, [1991] 4 All ER 897 (without express statutory authority, there is no power for a local authority to levy a charge).

3 I.e. closing even for a single day: *A-G v Loughborough Local Board* (1881) Times, 31 May, per Hall V-C.

4 See the Public Health Acts Amendment Act 1907 s 76(1)(b); and the Public Health Act 1925 s 56(5).

5 See the text and notes 6-8.

6 See the Local Government (Miscellaneous Provisions) Act 1976 s 19(1); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 595.

7 See the Local Government (Miscellaneous Provisions) Act 1976 s 19(2); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 595.

8 As to the power to make byelaws see PARA 556.

9 Public Health Acts Amendment Act 1890 s 44(1) (amended by the Public Health Act 1961 ss 53(1), (3), (4), 86(3), Sch 5 Pt II); London Government Act 1963 s 40; Local Government Act 1972 Sch 14 paras 23, 27. See also PARA 555. In computing the period of six consecutive days, a Saturday and the following Monday must be regarded as consecutive days: Public Health Act 1961 s 53(3). However, a London borough council when computing the six consecutive day period must include a Sunday (see the Greater London Council (General Powers) Act 1978 ss 2, 12(1)(a)), and may not close a park on more than three Sundays in a calendar year (ss 2, 12(1)(b)).

10 I.e. on any bank holiday or on Christmas Day or Good Friday, or on a day appointed for public thanksgiving or mourning, the public park or pleasure ground may not be closed if the area so closed together with any other

area so closed exceeds one-quarter of the total area of all parks or pleasure grounds provided by the authority: Public Health Act 1961 s 53(4); Local Government Act 1972 Sch 14 para 42.

11 Public Health Acts Amendment Act 1907 s 76(1)(a); London Government Act 1963 s 40; Local Government Act 1972 Sch 14 paras 23, 27. See also PARA 555. However, this may only be done on condition that at least three-quarters of the ice available for skating is open to the public free of charge: Public Health Acts Amendment Act 1907 s 76(1)(a).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(4) PUBLIC PLEASURE GROUNDS/559. General provision of facilities.

559. General provision of facilities.

A local authority¹ may provide in its area such recreational facilities as it thinks fit². This includes power to provide indoor facilities and outdoor facilities for games and swimming³, and facilities for boating, water skiing and fishing⁴, as well as power to provide premises for the use of clubs or societies having athletic, social or recreational objects⁵. A local authority⁶ may provide a boating pool in any park or pleasure ground provided by it or under its management or control⁷, and where there is a lake or other water in a park or pleasure ground provided by or under the management or control of a local authority, the authority may provide pleasure boats or may license persons to let boats for hire, and may make byelaws regulating the control of any such boats⁸. A local authority may also provide, in any public park or pleasure ground established or managed by it, apparatus for games and recreation⁹, chairs or seats, reading rooms, pavilions or other buildings and conveniences and refreshment rooms¹⁰. Where these facilities are so provided, charges may be made for their use¹¹ and the authority may employ officers for securing the observance of these regulations¹².

1 In the Local Government (Miscellaneous Provisions) Act 1976 s 19, 'local authority' means a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London, the Council of the Isles of Scilly, a parish council, a community council, and where relevant, a national park authority: s 44(1) (definition substituted by the Local Government Act 1985 Sch 14 para 53(b); and amended by Sch 17; the Environment Act 1995 Sch 9 para 8; and SI 1996/3071). As to local authorities generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq. As to national park authorities see PARA 526 et seq.

2 See the Local Government (Miscellaneous Provisions) Act 1976 s 19(1); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 595.

3 See the Local Government (Miscellaneous Provisions) Act 1976 s 19(1)(a), (b). As to the provision of facilities for recreation by water authorities or statutory water undertakers in reservoirs etc see **WATER AND WATERWAYS** vol 101 (2009) PARA 686.

4 Local Government (Miscellaneous Provisions) Act 1976 s 19(1)(c). For the full list of facilities mentioned in s 19(1)(a)-(f) see **LOCAL GOVERNMENT** vol 69 (2009) PARA 595.

5 See the Local Government (Miscellaneous Provisions) Act 1976 s 19(1)(d). The power to provide facilities under s 19(1) includes power to provide buildings, equipment, supplies and assistance of any kind (s 19(1)), and the authority may make charges for the provision of facilities (s 19(2)). A local authority may also set aside part of parks for the purposes of games and exclude the public from any part so set aside while it is in actual use for such purposes and permit the exclusive use by a club or other body of persons of any part of a park not being more than one-third of the area of any park or of any pavilion or building provided by the authority: see the Public Health Acts Amendment Act 1907 s 76(1)(b) (s 76(1) amended by the Local Government Act 1972 Sch 14 para 32, Sch 30); the Public Health Act 1961 s 52 (amended by the Statute Law (Repeals) Act 1989); the London Government Act 1963 s 40; and the Local Government Act 1972 Sch 14 paras 23, 27, 42, Sch 30. See also PARA 555. When exercising its discretion to provide premises for a sports club a local authority is entitled to have regard to the need to promote good relations between persons of different racial groups under the Race Relations Act 1976 s 71: *Wheeler v Leicester City Council* [1985] AC 1054, [1985] 2 All ER 1106, HL.

6 As to the meaning of 'local authority' for these purposes see PARA 555.

7 See the Public Health Act 1961 s 54(1); and the Local Government Act 1972 Sch 14 para 42.

8 See the Public Health Acts Amendment Act 1890 s 44(2); the Public Health Act 1961 s 54(6) (amended by the Statute Law (Repeals) Act 1989); and the Local Government Act 1972 Sch 14 paras 23, 27, 42. A public park provided under the Countryside Act 1968 s 7 is excluded from the provisions of the Public Health Acts Amendment Act 1890 s 44: see the Countryside Act 1968 s 7(7); and PARA 555. Extended power of licensing

boats lies under the Public Health Acts Amendment Act 1907: see s 94; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 597.

9 Public Health Acts Amendment Act 1907 s 76(1)(c) (as amended: see note 5).

10 See the Public Health Acts Amendment Act 1907 s 76(1)(f), (g), (i) (as amended: see note 5); and the Public Health Act 1961 s 52 (as amended: see note 5). See also the London Government Act 1963 s 40; the Local Government Act 1972 Sch 14 paras 23, 27, 42, Sch 30; and PARA 555.

No power under the Public Health Acts Amendment Act 1907 s 76 may be exercised in contravention of a covenant or condition subject to which a gift or lease of a public park or pleasure ground has been accepted or made without the consent of the persons entitled in law to the benefit of the covenant or condition: s 76(4).

11 See the Public Health Acts Amendment Act 1907 s 76(1)(c), (f), (g) (as amended: see note 5). A charge in respect of reading rooms must not be made on more than 12 days in any one year nor on more than four consecutive days: s 76(1)(g) (as so amended). A local authority may also let the refreshment rooms or the right of providing games apparatus, and may authorise any person to provide and charge for chairs or seats: see s 76(1)(c), (f), (i) (as so amended). As to local authority charging generally see *McCarthy and Stone (Developments) Ltd v Richmond upon Thames London Borough Council* [1992] 2 AC 48, [1991] 4 All ER 897 (without express statutory authority, there is no power for a local authority to levy a charge).

12 See under the Public Health Acts Amendment Act 1907 s 76: s 77. The authority may procure the officers to be sworn in as constables for the purpose, but no such officer may act as a constable unless in uniform or provided with a warrant: s 77. As to park constables see **POLICE** vol 36(1) (2007 Reissue) PARA 133.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(5) PARKS/560. Meaning of 'park'.

(5) PARKS

560. Meaning of 'park'.

The word 'park' is used in a variety of senses in the context of this title. Originally it referred to a deer park, an area of land over which rights of hunting were granted by the Crown as a franchise to a subject¹. Subsequently it referred to an area of land often adjacent to a mansion house used for recreation and sometimes as a home farm². The term park was extended to the royal parks³ and other enclosed areas, and therefore to places in towns set apart for recreation⁴ (often governed by municipal legislation); this identification was then extended to areas in the countryside administered by a local authority⁵. Certain areas of land that have been designated for protection as areas of natural beauty are known as 'national parks'⁶.

1 See **ANIMALS** vol 2 (2008) PARA 777.

2 See eg *Meyrick Estate Management Ltd v Secretary of State for Environment, Food and Rural Affairs* [2007] EWCA Civ 53 at [42], [2007] All ER (D) 09 (Feb) at [42].

3 As to the royal parks see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 367. As to the protection of royal parks see PARA 565; and see also PARA 564.

4 Land formally known as a recreation ground (see PARA 549 et seq) or a public pleasure ground (see PARA 555 et seq) is often informally called a park.

5 As to country parks see PARA 566.

6 As to national parks see PARA 636 et seq.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(5) PARKS/561. General control.

561. General control.

All parks, gardens, recreation grounds, open spaces and other land for the time being vested in or under the control or management of the Secretary of State¹ are subject to the powers conferred by the Parks Regulation Acts 1872 to 1974². These powers are additional to all other powers conferred by statute³ and do not prejudice or affect any prerogative or other right of the Crown or any power, right or duty of the Secretary of State⁴.

1 The Parks Regulation (Amendment) Act 1926 s 1 refers to the Commissioners of Works and the Minister of Agriculture and Fisheries, whose functions have been transferred to the Secretary of State. As to the Secretary of State, and as to the transfer of functions in respect of Wales to the Welsh Ministers, see PARA 519. The Royal Botanic Gardens at Kew are under the control of the Secretary of State: see the Parks Regulation (Amendment) Act 1926 s 3. As to his power to appoint trustees see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 883.

2 See the Parks Regulation (Amendment) Act 1926 ss 1, 3 (s 1 amended by the Statute Law (Repeals) Act 1989); and the Agriculture (Miscellaneous Provisions) Act 1968 s 48. The Acts which may be cited together as the Parks Regulation Acts 1872 to 1974 are the Parks Regulation Act 1872, the Parks Regulation (Amendment) Act 1926 and the Parks Regulation (Amendment) Act 1974: s 1(2).

However, the Parks Regulation Act 1872 does not apply to specified parks: Serious Organised Crime and Police Act 2005 s 162(1). 'Specified park' means a park, garden, recreation ground, open space or other land in the metropolitan police district which is specified in an order made by the Secretary of State, and to which the Parks Regulation Act 1872 applied by virtue of the Parks Regulation (Amendment) Act 1926 s 1: s 162(4). As to the specified parks see the Royal Parks (Regulation of Specified Parks) Order 2005, SI 2005/1522.

As to the power to make regulations in relation to certain lands vested in the Crown Estate Commissioners see the Crown Estate Act 1961 ss 6, 7; and **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 295, 367.

3 Parks Regulation Act 1872 s 12.

4 Parks Regulation Act 1872 s 13. The Act is not to interfere with rights of way or other legal rights (s 11) nor with the application of the provisions of the Metropolitan Streets Act 1867 (Parks Regulation Act 1872 s 14). 'Street' includes a highway or other public place, and royal parks, gardens and possessions within the City of London or the area enclosed in a circle with a radius of six miles in length of which the centre is Charing Cross, under the management of the Secretary of State and which are deemed public places for the purposes of the Metropolitan Streets Act 1867: see s 3 (amended by the Statute Law Revision Act 1893; the Statute Law (Repeals) Act 1989; and the Statute Law (Repeals) Act 1993). The Metropolitan Streets Act 1867 s 3 refers to the Commissioners of Works, as to whom see note 1.

There are restrictions on the appropriation for allotments of land which is a public park, garden or pleasure ground or which forms part of a town or village green: see **AGRICULTURAL LAND** vol 1 (2008) PARA 552. There are also restrictions on the compulsory acquisition for allotments of land which, at the date of the order, forms part of any park, garden or pleasure ground or is woodland not wholly surrounded by or adjacent to land acquired by a council: **AGRICULTURAL LAND** vol 1 (2008) PARA 544.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(5) PARKS/562. Regulations.

562. Regulations.

The Secretary of State may make such regulations to be observed by persons using any park vested in him or under his management or control as he considers necessary for securing the proper management of the park¹ and the preservation of order and the prevention of abuses within it². These regulations³ usually deal with such matters as the hours of opening of the park or of particular parts of it, the conduct of persons using the park as regards clothing, climbing of trees, lighting fires, damaging property and playing games, and provide limitations on the use of the park by children or animals⁴. The carrying on in the park of any trade or business may be prohibited⁵. Regulations may also be made for imposing and recovering charges for leaving vehicles, or vehicles of any class, in the park⁶. If the regulations so provide, the amount of any charge which has become due but has not been paid may be ordered, by the court trying the alleged offence of non-payment, to be paid and the sum unpaid may then be recovered as a penalty⁷.

1 'Park' includes all parks, gardens, recreation grounds, open spaces and other land vested in or under the control or management of the Secretary of State: see the Parks Regulation (Amendment) Act 1926 s 1 (amended by the Statute Law (Repeals) Act 1989); the Parks Regulation (Amendment) Act 1926 s 3; and the Agriculture (Miscellaneous Provisions) Act 1968 s 48. These Acts refer to the Commissioners of Works, the Minister of Agriculture and Fisheries, and the Minister of Agriculture, Fisheries and Food, but their functions have been transferred to the Secretary of State. As to the Secretary of State, and as to the transfer of functions in respect of Wales to the Welsh Ministers, see PARA 519.

2 Parks Regulation (Amendment) Act 1926 s 2(1). If any person fails to comply with, or acts in contravention of, any regulations so made, he is guilty of an offence against the Parks Regulation Act 1872 and is liable on summary conviction to a penalty not exceeding level 1 on the standard scale: Parks Regulation (Amendment) Act 1926 s 2(1) (amended by the Criminal Justice Act 1982 s 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to the power to make regulations in relation to certain lands vested in the Crown Estate Commissioners see the Crown Estate Act 1961 ss 6, 7; and **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 295, 367.

3 The regulations must be laid before Parliament: see the Parks Regulation (Amendment) Act 1926 s 2(2). Copies of the regulations must be put up in the park concerned in such conspicuous manner as the Secretary of State deems best calculated to give information to persons using the park: Parks Regulation Act 1872 s 10 (amended by the Parks Regulation (Amendment) Act 1926 Schedule). The Parks Regulation Act 1872 does not apply to specified parks: see PARA 561 note 2.

The mode of proof of documents provided by the Documentary Evidence Act 1868 and the Documentary Evidence Act 1882 applies: see the Parks Regulation (Amendment) Act 1926 s 2(4); and **CIVIL PROCEDURE** vol 11 (2009) PARA 889 et seq. The Documentary Evidence Act 1895 extended these Acts to the Board of Agriculture (see s 1), the functions of which have been transferred to the Secretary of State: see PARA 519.

References to regulations in the Parks Regulation Act 1872 are to be construed as references to regulations made under the Parks Regulation (Amendment) Act 1926: see s 2(3).

4 See eg the regulations relating to Kew Gardens, which are under the control of the Secretary of State, namely the Royal Botanic Gardens, Kew, Regulations 1977, SI 1977/2088. As to Kew Gardens see further **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 883 et seq.

5 A breach may be committed even though no money passes: see *Dove v Dyson* (1953) Times, 22 January, where the conviction of a photographer was upheld when he had taken photographs in Trafalgar Square but had collected payment at his home address. See also *Burgess v McCracken* (1986) 150 JP 529.

6 Road Traffic Regulation Act 1984 s 62. As to parking law generally see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 784 et seq.

7 See the Road Traffic Regulation Act 1984 s 47(4).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(5) PARKS/563. Offences.

563. Offences.

Any person who, within the view of a park constable¹, acts in contravention of any of the park regulations in the park² where the park constable has jurisdiction, and when required by any park constable or by any police constable to give his name and address gives a false name or false address, is liable to a fine³.

Penalties, which are recoverable summarily, are provided for breach of the regulations⁴.

If any person assaults a park constable in the execution of his duty, he is liable on summary conviction, at the discretion of the court, either to pay a penalty⁵ or to be imprisoned⁶.

1 'Park constable' means any person who has been appointed park constable of a park as defined by the Parks Regulation Act 1872: see s 3 (amended by the Parks Regulation (Amendment) Act 1974 Schedule para 1). As to the meaning of 'park' see PARA 562 note 1. Every park constable must on appointment be attested as a constable by making a declaration before a justice of the peace that he will duly execute the office of constable: Parks Regulation Act 1872 s 3A (added by the Parks Regulation (Amendment) Act 1974 Schedule para 2). Within the park, a park constable has all the powers, privileges and immunities, and is liable to all the duties and responsibilities, of a police constable within the area in which the park is situated (Parks Regulation Act 1872 s 7 (amended by the Parks Regulation (Amendment) Act 1974 Schedule para 1; and the Police Act 1996 Sch 7 para 7)), and he must obey all lawful commands (Parks Regulation Act 1872 s 7 (as so amended)). Section 7 refers to the Commissioners of Works, whose functions have been transferred to the Secretary of State. As to the Secretary of State, and as to the transfer of functions in respect of Wales to the Welsh Ministers, see PARA 519. A police constable belonging to the police force of the area in which a park is situated has within the park all the powers, privileges and immunities of a park constable: s 8 (amended by the Parks Regulation (Amendment) Act 1926 Schedule; the Parks Regulation (Amendment) Act 1974 Schedule para 1; and the Police Act 1996 Sch 7 para 8). As to constables generally see **POLICE**.

2 The Parks Regulation Act 1872 does not apply to specified parks: see PARA 561 note 2.

3 Parks Regulation Act 1872 s 5 (substituted by the Police and Criminal Evidence Act 1984 Sch 6 para 6; and amended by the Statute Law (Repeals) Act 1993). Such a person is liable on summary conviction to a penalty not exceeding level 1 on the standard scale: Parks Regulation Act 1872 s 5. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

4 See the Parks Regulation (Amendment) Act 1926 s 2(1) (amended by the Criminal Justice Act 1982 s 46); and PARA 562 note 2.

5 The penalty must not exceed level 2 on the standard scale: Parks Regulation Act 1872 s 6 (amended by the Parks Regulation (Amendment) Act 1974 Schedule para 1; the Criminal Justice Act 1982 s 46; and the Statute Law (Repeals) Act 1993); Criminal Justice Act 1948 s 1(2).

6 Parks Regulation Act 1872 s 6 (as amended: see note 5). The term of imprisonment must not exceed six months: s 6 (as so amended); Criminal Justice Act 1948 s 1(2).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(5) PARKS/564. Park trading.

564. Park trading.

Regulations may designate specified provisions of the park regulations¹ as 'park trading regulations'². An offence³ which is committed by failing to comply with or acting in contravention of a park trading regulation is a park trading offence⁴.

A park constable⁵ who reasonably suspects that a person has committed a park trading offence may seize anything of a non-perishable nature which the person has in his possession or under his control, and which the constable reasonably believes to have been used in the commission of the offence⁶. However, a park constable may exercise this power only in the park where he has jurisdiction⁷.

The Secretary of State⁸ may retain anything which has been seized until the end of the period of 28 days beginning with the date of the seizure⁹. Where before the end of that period an information for a park trading offence is laid against the person from whom the thing was seized, in respect of his activities at the time of the seizure¹⁰, then: (1) the Secretary of State may retain the thing seized until the conclusion of proceedings relating to the offence (including any appeal)¹¹; and (2) if an award is made of costs to be paid by the accused to the Secretary of State, the Secretary of State may retain the thing seized until the costs have been paid¹². If the Secretary of State has retained a thing in reliance on head (2) for the period of 28 days beginning with the date of the conclusion of proceedings relating to the offence (including any appeal): (a) he may sell it for the best price which he can reasonably obtain and apply the proceeds in discharge of the award of costs¹³; and (b) if he does so, he must pay any balance to the person whom he believes to have owned the thing immediately before the sale¹⁴. Where the Secretary of State ceases to be entitled to retain a thing he must, subject to any order for forfeiture¹⁵, return it to the person whom he believes to be its owner¹⁶.

A court which convicts a person of a park trading offence may order anything which:

- 39 (i) was seized under these provisions¹⁷;
- 40 (ii) is retained by the Secretary of State¹⁸; and
- 41 (iii) the court believes to have been used in the commission of the offence¹⁹,

to be forfeited and dealt with in a manner specified in the order²⁰. Before making an order for the forfeiture of a thing a court must: (A) permit anyone who claims to be its owner or to have an interest in it to make representations; and (B) consider its value and the likely consequences of forfeiture²¹.

1 le regulations made under the Parks Regulation (Amendment) Act 1926 s 2 (see PARA 562).

2 Royal Parks (Trading) Act 2000 s 1(1).

3 le under the Parks Regulation (Amendment) Act 1926 s 2 (see PARA 562).

4 Royal Parks (Trading) Act 2000 s 1(2). A person who commits such an offence is liable on summary conviction to a penalty not exceeding level 3 on the standard scale: see the Parks Regulation (Amendment) Act 1926 s 2 (modified for these purposes by the Royal Parks (Trading) Act 2000 s 2). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Where a park trading offence committed by a body corporate is proved:

42 (1) to have been committed with the consent or connivance of an officer of a body corporate (Royal Parks (Trading) Act 2000 s 3(1)); or

43 (2) to be attributable to any neglect on the part of an officer (s 3(2)),

he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly: s 3. For these purposes the following are officers of a body corporate: (a) a director; (b) a manager; (c) a secretary; (d) another similar officer; (e) a person purporting to act in any of the capacities listed in heads (a)-(d): s 3(1).

5 'Park constable' has the meaning given by the Parks Regulation Act 1872 s 3 (see PARA 563): Royal Parks (Trading) Act 2000 s 4(3).

6 Royal Parks (Trading) Act 2000 s 4(1). In the application of s 4 to a specified park the reference in s 4(1) to a park constable has effect as a reference to a constable, and the provisions of s 4(2), (3) do not apply: s 4(4) (s 4(4), (5) added by the Serious Organised Crime and Police Act 2005 Sch 13 para 9). 'Specified park' has the same meaning as in the Serious Organised Crime and Police Act 2005 s 162 (see PARA 561 note 2): Royal Parks (Trading) Act 2000 s 4(5) (as so added).

7 Royal Parks (Trading) Act 2000 s 4(2).

8 As to the Secretary of State see PARA 519.

9 Royal Parks (Trading) Act 2000 s 5(1).

10 Royal Parks (Trading) Act 2000 s 5(2).

11 Royal Parks (Trading) Act 2000 s 5(3)(a). Section 5(3) has effect subject to any order for forfeiture under s 6 (see the text and notes 17-21): s 5(4).

12 Royal Parks (Trading) Act 2000 s 5(3)(b). See note 11.

13 Royal Parks (Trading) Act 2000 s 5(5)(a).

14 Royal Parks (Trading) Act 2000 s 5(5)(b). If the Secretary of State cannot after reasonable inquiry identify a person for the purposes of s 5(5)(b) or s 5(6) (see the text and note 16), he must apply to a magistrates' court for directions (s 5(7)(a)); and the court must make an order about the treatment of the thing or the balance of its price (s 5(7)(b)).

15 Ie under the Royal Parks (Trading) Act 2000 s 6 (see the text and notes 17-21).

16 Royal Parks (Trading) Act 2000 s 5(6). See note 14.

17 Ie the Royal Parks (Trading) Act 2000 s 4 (see the text and notes 5-7).

18 Ie under the Royal Parks (Trading) Act 2000 s 5 (see the text and notes 8-16).

19 Royal Parks (Trading) Act 2000 s 6(2).

20 Royal Parks (Trading) Act 2000 s 6(1).

21 Royal Parks (Trading) Act 2000 s 6(3).

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565. Royal parks.

For the protection of the amenities of royal parks, garden and palaces¹, power is conferred on the Secretary of State² to enter upon enfranchised land³ in the daytime to inspect boundary walls and repair, rebuild or reinstate them⁴. Power is also conferred to impose by deed under the corporate seal⁵ upon any enfranchised land such conditions, stipulations and restrictions relating to:

- 42 (1) the maintenance, repair and reinstatement by or by the direction of the Secretary of State of the boundary wall of a royal park or garden so far as adjoining the land or comprised in any building on it⁶; and
- 43 (2) the character, height and elevation, towards the park or garden, of any future building, or any alteration of an existing building,

as should in the opinion of the Secretary of State be reasonably necessary for the protection of the amenities of the adjoining royal park or garden⁷. The conditions, stipulations and restrictions are binding in perpetuity, unless released, upon the land affected and the persons entitled to estates and interest in it, and are enforceable by the Secretary of State in the same manner as restrictive covenants running, as regards their burden, with the land⁸.

1 As to the royal parks see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 367. As to the special provisions relating to Windsor Great Park see the Crown Estate Act 1961 s 5; and **CROWN PROPERTY** vol 12(1) (Reissue) PARA 284. As to park trading see PARA 564.

Royal parks are subject to the Crown Lands Act 1702 (see **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 205, 284, 289, 308) and therefore are inalienable except by statute (see eg the Land at Palace Avenue, Kensington (Acquisition of Freehold) Act 2002).

As to the power to make regulations in relation to certain lands vested in the Crown Estate Commissioners see the Crown Estate Act 1961 ss 6, 7; and **CROWN PROPERTY** vol 12(1) (Reissue) PARAS 295, 367.

2 The Law of Property Act 1922 s 137 refers to the Commissioners of Works, whose functions have been transferred to the Secretary of State. As to the Secretary of State, and as to the transfer of functions in respect of Wales to the Welsh Ministers, see PARA 519.

3 The land formerly held as copyhold or customary freehold of the manors in question: see **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 641 et seq.

4 Law of Property Act 1922 s 137(1). These provisions apply to the manors of Hampton Court, Middlesex, and Richmond, Surrey, and every other manor vested at 1 January 1926 (ie the commencement of the Law of Property Act 1922) in the Crown or Duchy of Lancaster and land adjoining or separated only by a road or boundary wall from any royal park or garden: ss 137, 191(2) (s 191(2) repealed); Law of Property (Postponement) Act 1924 s 1 (repealed).

5 The deed must be enrolled on the court rolls of the manor within six months of execution and must be registered, in respect of restrictions, as a land charge under the Land Charges Act 1972: Law of Property Act 1922 s 137(2). This provision refers to the Land Charges Registration and Searches Act 1888, which was replaced by the Land Charges Act 1925, which was itself replaced, in relation to land charges other than local land charges, by the Land Charges Act 1972: see s 18(6).

6 Law of Property Act 1922 s 137(2)(a).

7 Law of Property Act 1922 s 137(2)(b). One month's notice in writing must be given and any objections must be considered: see s 137(3). Any person interested in enfranchised land in relation to which a deed has not been executed may give notice in writing to the Secretary of State to declare any intended conditions, stipulations and restrictions, and if the Secretary of State does not execute a deed within three months the land

is free from all such conditions, stipulations and restrictions: see s 137(5). Every deed executed under s 137 must be executed in duplicate and one part must be handed to the owner of the land affected, and the other part must be retained by the Secretary of State: s 137(6).

The conditions are registrable as restrictive covenants: see the Land Charges Act 1972 s 2(1), (5)(ii), s 15(2); and **EQUITY; LAND CHARGES; REAL PROPERTY**.

8 Law of Property Act 1922 s 137(4). Any person having or acquiring any estate or interest in any enfranchised land in relation to which a deed has been executed will, provided a land charge is duly registered, be deemed to have acquired such estate or interest with notice of all conditions, stipulations, and restrictions for the time being affecting the land: see s 137(8). The Secretary of State has power in his absolute discretion to release either wholly or partially and permanently or otherwise the conditions, stipulations and restrictions imposed by him on any enfranchised land or to waive any breach of them: s 137(7).

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566. Country parks.

A local authority¹ has power to provide a country park² on any site in the countryside appearing to it suitable or adaptable for the purpose of providing or improving opportunities for the enjoyment of the countryside by the public³. The authority may extend, maintain and manage the country park and do all other things appearing to it desirable for that purpose in connection with the provision of the park⁴. In particular it may:

- 44 (1) lay out, plant and improve the site and erect buildings and carry out works⁵;
- 45 (2) provide facilities and services for the enjoyment or convenience of the public, including meals and refreshments, parking places for vehicles, shelters and lavatory accommodation⁶; and
- 46 (3) provide facilities and services for open-air recreation⁷.

Where the country park comprises any waterway⁸ or is bounded by the sea or any waterway which is not part of the sea, the local authority may provide facilities and services for sailing, boating, bathing and fishing⁹.

A local authority may make byelaws regulating the use of works carried out by it in pursuance of these provisions¹⁰ and of any facilities or services provided in connection with the works¹¹; and the authority may also make byelaws for the preservation of order, for the prevention of damage to the land or anything on it and for securing that persons resorting to it will so behave themselves as to avoid undue interference with the enjoyment of the land by others¹².

These powers are exercisable on land belonging to the local authority¹³ or on such terms as may be agreed with the owners on other land¹⁴. A local authority may acquire land compulsorily for the purpose of its functions¹⁵.

The above powers are not exercisable as regards Epping Forest and Burnham Beeches¹⁶.

1 'Local authority' for the purposes of the Countryside Act 1968 ss 6-9 means a county council, a district council or a county or county borough council, or the Common Council of the City of London or any London borough council: s 6(2) (amended by the Local Government Act 1972 Sch 30; the Local Government Act 1985 Sch 17; and the Environment Act 1995 Sch 24; and by virtue of the Local Government Act 1972 s 179(1), (3); and the Local Government (Wales) Act 1994 s 17(1), (2), (4)). The Countryside Act 1968 ss 6-9 have effect as if the Broads Authority were a local authority (s 47A(1) (s 47A added by the Norfolk and Suffolk Broads Act 1988 Sch 3 para 6)) and as if a national park authority were a local authority (Environment Act 1995 Sch 9 para 5; and see PARA 644). As to the Broads Authority see PARA 531. As to national park authorities see PARA 526 et seq.

2 I.e. a park or pleasure ground to be used for the purpose of a country park: Countryside Act 1968 s 7(1).

3 See the Countryside Act 1968 ss 6(1), 7(1). In exercising its powers under ss 6-9 (see also PARA 556) in any area in the countryside, a local authority must have regard to: (1) the location of the area in relation to an urban or built-up area (s 6(1)(a)); and (2) the availability and adequacy of existing facilities for the enjoyment of the countryside by the public (s 6(1)(b)). A local authority may exercise its powers under ss 7-9 inside or outside its area: s 6(3) (amended by the Local Government Act 1972 Sch 30).

4 Countryside Act 1968 s 7(2). The authority may make reasonable charges for the use of any waterway comprised in a country park (see the text and notes 8-9) and of any part of a country park set aside for any particular form of recreation: see s 43(2), (3); and PARA 567 note 9.

5 Countryside Act 1968 s 7(2)(a).

6 Countryside Act 1968 s 7(2)(b). As to the meaning of 'vehicle' see PARA 672 note 6 (definition applied by s 49(1)). Accommodation, meals and refreshments may only be provided in so far as it appears to the authority that the facilities for them within the country park are inadequate or unsatisfactory, either generally or as respects any description of accommodation, meals or refreshments, as the case may be: s 7(2) proviso.

7 Countryside Act 1968 s 7(2)(c). 'Open-air recreation' is not defined for this purpose.

8 As to the meaning of 'waterway' see PARA 646 note 10 (definition applied by the Countryside Act 1968 s 49(1)).

9 See the Countryside Act 1968 s 8(1), (2). Where the country park is bounded by the sea or a waterway which is not part of the sea the local authority has the power to carry out such work and do such things as appear necessary or expedient for facilitating the use of the water for these purposes: s 8(2). There is also power to erect buildings or carry out works on land adjoining the sea or other waters but outside the country park, and to construct jetties or other works wholly or partly in the sea or other waters: s 8(3). Before acting under s 8(1)-(3) the local authority must consult with and seek the consent of the Environment Agency and such authorities which under any enactment have functions relating to the sea or other waters in question as the Secretary of State or the Welsh Ministers may generally or in any particular case direct: s 8(4) (amended by the Water Act 1989 Sch 25 para 37(1)); Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1. Where any authority so consulted withholds its consent special provisions apply: see the Countryside Act 1968 s 8(4) (as so amended), Sch 1; and PARA 646 note 11. Nothing in these provisions authorises the carrying out of any operation in contravention of the Coast Protection Act 1949 s 34 (see **WATER AND WATERWAYS** vol 101 (2009) PARA 533 et seq); Countryside Act 1968 s 8(6). As to the Environment Agency see PARA 528; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq. As to the Secretary of State and the Welsh Ministers see PARA 519.

10 As to the provisions of the Countryside Act 1968 s 8: s 8(5) (amended by the Environmental Protection Act 1990 Sch 8 para 2(1), (5); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 45).

11 Countryside Act 1968 s 8(5) (as amended: see note 10). The local authority must consult Natural England if the works are in England or the Countryside Council for Wales if the works are in Wales before making any byelaws: s 8(5) (as so amended). As to Natural England see PARA 523; and as to the Countryside Council for Wales see PARA 524. The byelaws must not interfere with the exercise of any functions relating to the waters or land to which they apply which are exercisable by any authority under any enactment: s 8(5) proviso.

12 See the Countryside Act 1968 s 8(5) (as amended: see note 10), s 41(1)(a); the National Parks and Access to the Countryside Act 1949 s 106; and PARA 648. Byelaws made under the Countryside Act 1968 s 41 may: (1) prohibit or restrict the use of land or a waterway by traffic of specified descriptions (s 41(3)(a)); (2) prohibit the deposit of rubbish and litter (s 41(3)(b)); (3) regulate or prohibit the lighting of fires (s 41(3)(c)); (4) regulate sailing, boating, bathing, fishing and other forms of recreation on waterways (s 41(3)(d)); (5) prohibit the use of a waterway in a country park by boats not registered with the local authority under the byelaws (s 41(3)(e)); and (6) relate to the whole or part of the land or waterway and make different provisions for different parts (s 41(3)(f)). They may authorise the making of reasonable charges in respect of the registration of boats: s 41(3). As to the meaning of 'boat' see PARA 649 note 5. The byelaws must not interfere with the exercise of any public right of way or of any functions relating to the land or waterway to which the byelaws apply which are exercisable by any authority under any enactment, or with the provision of an electronic communications code network: s 41(4) (amended by the Telecommunications Act 1984 Sch 4 para 48(1); and the Communications Act 2003 Sch 17 para 40(1), (2)). As to electronic communications code networks see **TELECOMMUNICATIONS** vol 97 (2010) PARA 174. As to the electronic communications code see **TELECOMMUNICATIONS** vol 97 (2010) PARA 151 et seq. As to the meaning of 'operator' see **TELECOMMUNICATIONS** vol 97 (2010) PARA 174. Before a local authority makes byelaws under the Countryside Act 1968 s 41 in respect of a national park or an area of outstanding natural beauty, it must consult Natural England as respects a park or area in England or the Countryside Council for Wales as respects a park or area in Wales: s 41(5) (amended by the Environmental Protection Act 1990 Sch 8 para 2(1), (10); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 53(1), (3)). As to national parks see PARA 636 et seq; and as to areas of outstanding natural beauty see PARA 658 et seq. A county council, a district council or a county or county borough council may enforce byelaws made under the Countryside Act 1968 s 41 by another authority as respects land in the council's area: s 41(6); Local Government Act 1972 s 179(1), (3); Local Government (Wales) Act 1994 s 17(1), (2), (4). Wardens may be appointed to enforce the byelaws: see the Countryside Act 1968 s 41(8) (amended by the Environmental Protection Act 1990 Sch 8 para 2(1), (10); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 53(1), (3)). As to wardens see PARA 650. The powers conferred on the local authority by or under the Countryside Act 1968 s 41 in relation to functions which are functions of a national park authority are exercisable by that authority and also by a district council in relation to that council's functions by virtue of the Environment Act 1995 s 68(6)(b), but not by any other authority: s 68(8). As to national park authorities see PARA 526 et seq.

13 Countryside Act 1968 s 7(3)(a). Facilities and services provided by a local authority under the Countryside Act 1968 must be made available for those who do not normally reside in the authority's area as freely as for those who do: s 43(1).

14 Countryside Act 1968 s 7(3)(b). As to the meaning of 'owner' see PARA 668 note 5 (definition applied by s 49(1)). Such an agreement may provide for the making by the local authority of payments in consideration of the making of the agreement and payments by way of contribution towards expenditure incurred by the persons making the agreement in consequence of it: s 7(3). The following has effect as respects any power conferred by the Countryside Act 1968 on the Countryside Council for Wales or any local authority to enter into agreements with landowners and other persons having interests in land: s 45(1) (amended by the Environmental Protection Act 1990 Sch 8 para 2(1), (11); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 54, Sch 12). As to the powers of Natural England to make agreements in relation to land see PARA 762. For these purposes, 'local authority' includes the Broads Authority: see the Countryside Act 1968 s 47A(5) (as added: see note 1). Where a landowner, or other person having an interest in the land, by the agreement grants or agrees to grant any right as respects the land, the grant or agreement is binding on any person deriving title or otherwise claiming under the grantor to the same extent as it is binding on the grantor notwithstanding that it would not have been binding on that person apart from these provisions: s 45(3). Such agreements may be made either irrevocably or subject to specified provisions as to revocation or variation: s 45(4). For purposes relating to the dedication of a highway or granting an easement the use of a way across land while the subject of an agreement must be disregarded: see s 45(5). The Forestry Act 1967 Sch 2 (see **FORESTRY** vol 52 (2009) PARA 119) applies to such agreements as it applies to a covenant: Countryside Act 1968 s 45(2).

The appropriate authority (as to the meaning of which see PARA 639 note 2) may enter into such an agreement (ie an agreement under s 7(3)(b) or s 45) as respects an interest in Crown land (as to the meaning of which see PARA 639 note 1) held by or on behalf of the Crown, and any such agreement as respects any other interest in Crown land has no effect unless approved by the appropriate authority: s 47(3). However, an agreement so authorised made by any government department has no effect unless it is approved by the Treasury; and in considering whether to make or approve an agreement so authorised and relating to land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, the department and the Treasury must have regard to the purposes for which the land is held: s 47(4). Any power under the Countryside Act 1968 to acquire land compulsorily may be exercised to acquire an interest in Crown land, other than one held by or on behalf of the Crown, but only with the consent of the appropriate authority: s 47(2). If any land subject to an agreement to which s 45 applies becomes Crown land, s 45(3) ceases to apply unless the appropriate authority consents to its continued application to the agreement: s 47(6). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

As to land comprising a park or pleasure ground being used as a country park see s 7(5); and PARA 556. If it appears to a local authority that land provided or acquired by it before 3 August 1968 (ie the date of commencement of these provisions: see s 50(3)) as open country to be used for the purposes of the National Parks and Access to the Countryside Act 1949 Pt V (ss 59-83) (see PARA 581 et seq) can suitably be used as a country park, that land or any part of it may from such date as the local authority may determine be treated as a country park under these provisions: Countryside Act 1968 s 7(6). If the land was acquired compulsorily under the National Parks and Access to the Countryside Act 1949 s 76 (see PARA 633), land so treated as a country park ceases to be subject to s 76, but the Countryside Act 1968 s 7(6) does not affect any trust, covenant or other restriction to which the land is subject (s 7(6)(a)), and no grant is payable under the Countryside Act 1968 in respect of expenditure incurred before the date so determined (s 7(6)(b)).

15 Countryside Act 1968 s 7(4). As to powers of compulsory acquisition see the National Parks and Access to the Countryside Act 1949 s 103; the Countryside Act 1968 s 46(1); and PARA 668. National Trust land held inalienably (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 995) is excluded from this provision: see the National Parks and Access to the Countryside Act 1949 s 113; and the Countryside Act 1968 s 46(5).

16 Countryside Act 1968 s 46(4).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(5) PARKS/567. Camping and picnic sites.

567. Camping and picnic sites.

A local planning authority¹ and a district council have power to provide in the countryside within their areas camping sites for holiday and recreational purposes to be used primarily as places for setting up tents², and picnic sites for motorists and others using the roads³. Both types of site may have space for parking vehicles and a means of access to and from a road⁴. A local authority has power to acquire compulsorily any land required by it to carry out these functions⁵.

A local authority may make byelaws as respects picnic sites for the preservation of order, for the prevention of damage to the land or anything on it and for securing that persons resorting to it will so behave themselves as to avoid undue interference with the enjoyment of the land by others⁶. A local authority may also make such byelaws in relation to a trunk road picnic area⁷ as respects which functions are delegated to the local authority or become the functions of the local authority by virtue of an agreement with the Secretary of State or the Welsh Ministers⁸. It may make reasonable charges for the use of any camping site, picnic site or parking place⁹.

These powers are not exercisable as regards Epping Forest and Burnham Beeches¹⁰.

1 As to the meaning of 'local planning authority' see PARA 636 note 12. The Countryside Act 1968 s 10 has effect as if the Broads Authority were a local planning authority: s 47A(2) (s 47A added by the Norfolk and Suffolk Broads Act 1988 Sch 3 para 6). As to the Broads Authority see PARA 531. Where a national park authority is the local planning authority, functions conferred by the Countryside Act 1968 s 10 are exercisable in relation to so much of that park as is comprised in a district for which there is a district council, concurrently with the national park authority, by that council: Environment Act 1995 s 68(6). The functions are deemed to be conferred on the district council as a district planning authority and as if the district were the area for which it is such an authority: s 68(7). As to national park authorities see PARA 526 et seq.

2 Countryside Act 1968 s 10(1); Local Government Act 1972 s 179(3).

3 Countryside Act 1968 s 10(2); Local Government Act 1972 s 179(3); and see PARA 566 note 13.

4 Countryside Act 1968 s 10(1), (2). The local authority may do anything appearing to it desirable in connection with the provision of a site, and in particular may manage a site or lease it to some other person, and may provide, for the use of those occupying the site, any services or facilities for their health or convenience: s 10(3).

5 Countryside Act 1968 s 10(4). See also PARA 566 note 14.

6 Countryside Act 1968 s 41(1)(c). As to the local authority which exercises the function of making byelaws see PARA 566 note 12. See also the National Parks and Access to the Countryside Act 1949 s 106; and PARA 648. Wardens may be appointed to enforce the byelaws: see the Countryside Act 1968 s 41(8). As to wardens see PARA 650. As to byelaws generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 553 et seq.

7 As to the meaning of 'trunk road picnic area' see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 709.

8 Countryside Act 1968 s 41(1)(d) (added by the Highways Act 1980 s 342(a)). As to the Secretary of State and the Welsh Ministers see PARA 519. As to the delegation or agreement see the Highways Act 1980 s 113(1), (3); and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 723. This power to make byelaws is exercisable only in so far as conditions attached to the delegation or agreement do not otherwise provide: Countryside Act 1968 s 41(1A) (added by the Highways Act 1980 s 342(b)).

9 See the Countryside Act 1968 s 43(2), (3). The authority may arrange for any of the facilities or services which it has power to provide under the Countryside Act 1968 to be provided by some other person and may authorise that person to make reasonable charges: s 43(2). The authority may also enter into agreements with any other authority or person for the use, on such terms as may be agreed, of any facilities or services provided

by or under the control of that other authority or person and if it appears convenient for the services of any staff employed in connection with them: s 43(5). The power to provide buildings or other premises includes a power to equip them with necessary equipment: s 43(4). Section 43 has effect as if a national park authority were a local authority (Environment Act 1995 Sch 9 para 5) and as if the Broads Authority were a local authority (Countryside Act 1968 s 47A(5) (as added: see note 1)).

10 See Countryside Act 1968 s 46(4).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(5) PARKS/568. Common land.

568. Common land.

As respects any common land¹ to which the public have rights of access², a local authority³ has special powers which are to be exercised in the interests of persons resorting to the land for open-air recreation⁴. The authority may exercise the powers on land taken out of the common land⁵ or on other land in the neighbourhood of the common land⁶. It may acquire compulsorily any land in the neighbourhood of the common land which it requires for the purposes of its functions under these powers⁷ and which is not common land⁸, and may acquire by agreement, or appropriate, common land for these purposes if authorised⁹ by the Secretary of State or the Welsh Ministers¹⁰. No statutory restriction applying to commons generally, or to any particular common, and no trust subject to which the common land is held, prevents a local authority from taking part of common land under these provisions¹¹.

A local authority has power to do anything appearing to it desirable for the purpose of providing or improving opportunities for public enjoyment of the countryside, and in the interests of persons resorting to the common land¹². In particular, it may provide facilities and services for the enjoyment or convenience of the public¹³, erect buildings and carry out works¹⁴, and make byelaws¹⁵ as respects the land¹⁶.

1 'Common land' means land subject to rights of common, whether exercisable at all times or only during limited periods, and waste land of a manor not subject to rights of common, but does not include a town or village green or any land forming part of a highway: Commons Registration Act 1965 s 22(1) (definition applied by the Countryside Act 1968 s 9(6), Sch 2 para 7). As to rights of common see **COMMONS** vol 13 (2009) PARA 407; and as to town or village greens see PARA 532 et seq. As from a day to be appointed, 'common land' means: (1) land registered as common land in a register of common land kept under the Commons Act 2006 Pt 1 (ss 1-25) (see **COMMONS** vol 13 (2009) PARA 521 et seq); or (2) land to which Pt 1 does not apply and which is subject to rights of common within the meaning of the Commons Act 2006 (see **COMMONS** vol 13 (2009) PARA 405); Countryside Act 1968 s 9(6), Sch 2 para 7 (prospectively amended by the Commons Act 2006 Sch 5 para 1(1)). At the date at which this volume states the law, no such day had been appointed.

2 'Common land to which the public have rights of access' means: (1) land to which the Law of Property Act 1925 s 193 for the time being applies (see **COMMONS** vol 13 (2009) PARAS 580-581), other than land to which s 193 applies by virtue of a revocable instrument; (2) common land comprised in an access agreement or access order (see PARA 615 et seq), other than a revocable access agreement or one expressed to have effect only for a specified period; or (3) any other common land to which the public have rights of access permanently or for an indefinite period: Countryside Act 1968 s 9(6). As to the statutory right of access to registered common land see PARA 580 head (2).

3 As to the meaning of 'local authority' see PARA 566 note 1.

4 Countryside Act 1968 s 9(1). 'Open-air recreation' is not defined for this purpose. As to whom the facilities and services provided by a local authority are available see PARA 566 note 13.

5 The Secretary of State or the Welsh Ministers may authorise the authority to acquire any part of the common land, including all commonable and other rights in or over it, and, where the authority already holds the land, to appropriate it for the purposes of the Countryside Act 1968 s 9: Sch 2 para 1(1), (2). As to the Secretary of State and the Welsh Ministers see PARA 519. References to commonable and other rights in or over common land do not include references to any rights vested in statutory undertakers for the purpose of the carrying on of their undertaking or to any right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network: Sch 2 para 6 (amended by the Telecommunications Act 1984 Sch 4 para 48(2); and the Communications Act 2003 Sch 17 para 40(1), (3)). As to electronic communications code networks see **TELECOMMUNICATIONS** vol 97 (2010) PARA 174. As to the electronic communications code see **TELECOMMUNICATIONS** vol 97 (2010) PARA 151 et seq. As to the meaning of 'operator' see **TELECOMMUNICATIONS** vol 97 (2010) PARA 174. Land so held or appropriated is to be held by the local authority free from the public rights of access, but is to be used for the benefit of the public resorting to

the common land: Countryside Act 1968 Sch 2 para 1(3). As to the acquisition of common land see **COMMONS** vol 13 (2009) PARA 479 et seq.

Before applying to the Secretary of State or the Welsh Ministers for authority, the local authority must publish in two successive weeks in one or more newspapers circulating in the locality of the land notices of its intention, with full particulars: see Sch 2 para 2(1). If all or any part of the land to be taken is in a parish, the local authority must, not later than the time of first publication of the notice, serve a copy of the notice on the parish council or chairman of the parish meeting: Sch 2 para 2(2). The notice must name a place within the locality where a map showing the land, and any land given or to be given in exchange, may be inspected, and must specify the time (not being less than 28 days from the first publication of the notice) within which and the manner in which representations concerning the proposals in the notice may be made to the Secretary of State or the Welsh Ministers: Sch 2 para 2(3). The Secretary of State or the Welsh Ministers must take into consideration every representation made, and may either afford each person making such a representation an opportunity of appearing before a person appointed for the purpose or hold a public inquiry: Sch 2 para 2(4). Before giving authority the Secretary of State or the Welsh Ministers must be satisfied either that there has been or will be given in exchange for the common land other land, not being less in area and being equally advantageous to the persons entitled to commonable and other rights and to the public (see Sch 2 para 1(4)(a)) or that the giving of land in exchange is unnecessary (see Sch 2 para 1(4)(b)).

6 Countryside Act 1968 s 9(2).

7 le for the purposes of the Countryside Act 1968 s 9.

8 Countryside Act 1968 s 9(5). A local authority also has power to acquire compulsorily any land which it requires for those purposes and which is part of the common land, or any commonable or other rights in or over that land, but the Secretary of State or the Welsh Ministers must not confirm a compulsory purchase order except after giving authority under Sch 2 para 1 (see note 5) as respects the land: Sch 2 para 3(1). The notice published, affixed or served under the Acquisition of Land Act 1981 s 11 or s 12 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 559-560) must refer to the Countryside Act 1968 Sch 2, and state whether land, and if so what land, has been or is to be given in exchange (see Sch 2 para 3(2), (4) (amended by the Acquisition of Land Act 1981 Sch 4 para 17(1); and the Planning and Compulsory Purchase Act 2004 Sch 7 para 5(1))), and may be combined with the notice under the Countryside Act 1968 Sch 2 para 2 (see note 5) (Sch 2 para 3(3) (amended by the Acquisition of Land Act 1981 Sch 4 para 17(1))). A compulsory purchase order may provide for discharging the land purchased from all rights, trusts and incidents to which it was previously subject: Countryside Act 1968 Sch 2 para 3(5). The special common land provisions of the Acquisition of Land 1981 s 19 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 531), and the Commons Act 1899 s 22 (see **COMMONS** vol 13 (2009) PARA 476) do not apply: Countryside Act 1968 Sch 2 para 3(6) (amended by the Acquisition of Land Act 1981 Sch 4 para 17(1)).

9 le under the Countryside Act 1968 Sch 2 para 1: see note 5.

10 Countryside Act 1968 Sch 2 para 4(1). Subject to this it may appropriate any common land for these purposes without the consent of the Secretary of State or the Welsh Ministers required by the Local Government Act 1972 s 122 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 513) or the National Parks and Access to the Countryside Act 1949 s 104 (see PARA 651): see the Countryside Act 1968 Sch 2 para 4(2). On an appropriation of land such adjustments must be made in the authority's accounts as directed by the Secretary of State or the Welsh Ministers: Sch 2 para 4(3).

11 Countryside Act 1968 Sch 2 para 5.

12 Countryside Act 1968 s 9(3).

13 Countryside Act 1968 s 9(3)(a). These facilities include meals and refreshments, parking places for vehicles, shelters and lavatory accommodation: s 9(3)(a). However, the authority may not provide accommodation, meals or refreshments except in so far as it appears to it that facilities for them in the neighbourhood of the common land are inadequate or unsatisfactory: s 9(3) proviso.

14 Countryside Act 1968 s 9(3)(b).

15 le under the Countryside Act 1968 s 41: see PARA 566 note 12.

16 Countryside Act 1968 s 41(1)(b).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(6) TRANSFER OF MANAGEMENT FUNCTIONS TO LOCAL AUTHORITIES/569. Powers of statutory trustees.

(6) TRANSFER OF MANAGEMENT FUNCTIONS TO LOCAL AUTHORITIES

569. Powers of statutory trustees.

Where in pursuance of a local or private Act of Parliament an open space¹ is placed under the care and management of trustees with a view to its preservation or regulation as a garden or open space, the trustees may in pursuance of a special resolution², and with the consent of owners and occupiers³ of houses in the vicinity⁴, convey⁵ or lease the open space to the local authority⁶. Alternatively the trustees may make an agreement with the local authority for the opening to the public of the open space, and for its care and management by the local authority⁷; or they may themselves admit members of the public⁸ to the enjoyment of the open space⁹.

Where the freehold of the open space and the freehold of all or the greater part of the houses round it are vested in the same person, the above powers must not be exercised without the consent of that person¹⁰.

1 As to the meaning of 'open space' see PARA 504. The Open Spaces Act 1906 does not apply to: (1) the royal parks; (2) land belonging to Her Majesty in right of the Crown or the Duchy of Lancaster; (3) gardens or ornamental land under the management of the Secretary of State or the Welsh Ministers or land within the purview of the Crown Estate Paving Act 1851 managed by the Secretary of State; (4) land belonging to the Inner Temple or the Middle Temple: s 19(1) (renumbered and amended by SI 1965/654). The Open Spaces Act 1906 s 19(1) refers to the Commissioners of Works, whose functions have been transferred to the Secretary of State. As to the Secretary of State, and as to the transfer of functions in respect of Wales to the Welsh Ministers, see PARA 519. The Open Spaces Act 1906 (with the exception of s 15: see PARA 577) does not apply to metropolitan commons, within the meaning of the Metropolitan Commons Acts 1866 to 1898 (see **LONDON GOVERNMENT**), not falling within the London Authorities (Property etc) Order 1964, SI 1964/1464, art 32 (see **LONDON GOVERNMENT**): Open Spaces Act 1906 s 19(2) (added by SI 1965/654).

2 A resolution for the purposes of the Open Spaces Act 1906 is a special resolution when it is: (1) passed by a majority of at least two-thirds of the persons present at a meeting summoned in accordance with the Act (s 8(1)(a)); and (2) confirmed by another resolution passed by a majority of at least two-thirds of the persons present at a meeting summoned in accordance with the Act and held after an interval of not less than one month from the first meeting (s 8(1)(b)).

A meeting of trustees must be summoned by a notice stating generally the objects of the meeting, and the notice must be left at or posted to the last-known or usual place of abode of each trustee at least one month before the date of the meeting: s 8(2). A meeting of owners and occupiers of houses must be summoned by a notice stating generally the objects of the meeting, and the notice must be left at or sent through the post to each of such houses at least one month before the date of the meeting, and inserted as an advertisement at least three times in any two or more papers circulating in the neighbourhood: s 8(3).

If, at a meeting of trustees or of owners and occupiers, a resolution in respect of an open space is rejected, three years must elapse before the matter is raised again: s 8(4).

A meeting of owners and occupiers must not be held between 1 August of one year and 31 January of the following year: s 8(5).

3 'Owner' in relation to a house includes any person entitled to any term of years in the house; and 'owner' in relation to an open space (not being a burial ground) means any person in whom the open space is vested for an estate in possession during his life or for any larger estate: Open Spaces Act 1906 s 20. As to burial grounds see PARA 573. 'Occupier' in relation to a house means the person subject to payment of rates: see s 20. Section 20 refers to the poor rate, as to which see **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 2.

4 Ie the owners and occupiers of any houses which front upon the open space or of which the owners and occupiers are liable to be specially rated for the maintenance of the open space: Open Spaces Act 1906 s 2(1).

5 If the trustees have no estate or interest to convey they may transfer the entire care and management of the open space to the local authority for it to be preserved for the enjoyment of the public: Open Spaces Act 1906 s 2(1)(a).

6 Open Spaces Act 1906 s 2(1)(b). The following are local authorities for the purposes of the Open Spaces Act 1906: (1) the council of any county or district; (2) the Common Council of the City of London; (3) any parish or community council whether or not invested with the powers of the Open Spaces Act 1906 by the council of the county in which the parish is situate: s 1 (amended by the London Government Act 1963 Sch 18 Pt II; and the Parish Councils Act 1957, Sch 2); Parish Councils Act 1957 s 8(1); Local Government Act 1972 ss 1(11), 179(3), (4). 'Common Council of the City of London' means the mayor, aldermen and commons of the City of London in Common Council assembled: Open Spaces Act 1906 s 20. References to local authorities include national park authorities: Environment Act 1995 Sch 9 para 2. As to national park authorities see PARA 526 et seq. Local authorities for the purposes of the Open Spaces Act 1906 (other than s 14) include London borough councils: London Government Act 1963 s 58(1) (amended by the Local Government Planning and Land Act 1980 Sch 3 para 11; and the Local Government Act 1985 Sch 17). As to the abolition of municipal borough councils which were local authorities for the above purposes and as to local government reorganisation in general see ss 1(10), (11), 20(6) (substituted by the Local Government (Wales) Act 1994 s 1(1)); the Local Government Act 1972 s 179; and **LOCAL GOVERNMENT** vol 69 (2009) PARA 5 et seq.

The powers formerly exercisable by the Greater London Council under the Local Government Act 1985 were transferred to the former London Residuary Body, in respect of parks and open spaces vested in it by the Local Government Reorganisation (Property etc) Order 1986, SI 1986/148: see art 23(5). As to the abolition of the Greater London Council see **LOCAL GOVERNMENT** vol 69 (2009) PARA 35; and **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 33. Certain Hampstead Heath lands were vested in the London Residuary Body: Local Government Reorganisation (Property etc) Order 1986, SI 1986/148, art 13(3). All interests, rights and liabilities of the former Residuary Body, and the functions that were exercisable by the former Greater London Council under the Open Spaces Act 1906, in respect of the Heath lands were vested in and are now exercised by the Common Council of the City of London: Local Government Act 1985 ss 67(3), 100(2)-(4); London Government Reorganisation (Hampstead Heath) Order 1989, SI 1989/304, arts 3, 4, 5(1). For further provisions as to open spaces in London see the Ministry of Housing and Local Government Provisions Order Confirmation (Greater London Parks and Open Spaces) Act 1967 Schedule Pt II; and PARA 509.

7 Open Spaces Act 1906 s 2(1)(c).

8 The persons not owning, occupying or residing in any house fronting on the open space: Open Spaces Act 1906 s 2(1)(d).

9 Open Spaces Act 1906 s 2(1)(d). The admission may be subject to terms and conditions which the trustees think proper: s 2(1)(d). Where admission is authorised by the trustees they have the same powers of making byelaws as are conferred on a committee of the inhabitants of a square by the Town Gardens Protection Act 1863 s 4 (see PARA 547): Open Spaces Act 1906 s 15(3).

10 Open Spaces Act 1906 s 2(2).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(6) TRANSFER OF MANAGEMENT FUNCTIONS TO LOCAL AUTHORITIES/570. Effect of conveyance.

570. Effect of conveyance.

Any conveyance, transfer, grant or agreement made under the powers of the statutory trustees¹, if in accordance with the statutory provisions², is a good execution of the trusts, powers and duties of the trustees and, if the trustees convey their entire interest or transfer the entire care and management of the open space³, they are relieved and discharged from all trusts, powers and duties in relation to it⁴.

1 le under the Open Spaces Act 1906 s 2(1) (see PARA 569): s 2(4).

2 If the trustees are a corporation, the instrument must be under its common seal, and if the trustees are not a corporation, the instrument must be under the hands and seals of any five of the trustees or of all the trustees, if for the time being they are less than five in number: Open Spaces Act 1906 s 2(3).

3 As to the meaning of 'open space' see PARA 504.

4 Open Spaces Act 1906 s 2(4).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(6) TRANSFER OF MANAGEMENT FUNCTIONS TO LOCAL AUTHORITIES/571. Disposal of consideration.

571. Disposal of consideration.

Any consideration received for the grant or transfer of an open space¹ is to be held in trust for the benefit of the persons or class of persons for whose benefit it was previously preserved and managed by the trustees, or for the benefit of the objects to which any rates previously imposed in respect of the open space were applied².

¹ See under the Open Spaces Act 1906 s 2 (see PARAS 569-570): s 2(5). As to the meaning of 'open space' see PARA 504.

² Open Spaces Act 1906 s 2(5). Such persons or class of persons are discharged either absolutely, or, if the grant is for a term of years or other limited interest, during the continuance of that interest, from any special rate or obligation previously imposed on them in respect of the open space: s 2(5).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(6) TRANSFER OF MANAGEMENT FUNCTIONS TO LOCAL AUTHORITIES/572. Conveyance by non-statutory trustees.

572. Conveyance by non-statutory trustees.

Land held by trustees (not being trustees under a local or private Act of Parliament) upon trusts for public recreation may be transferred to a local authority¹ as a free gift, absolutely or for a term². If the local authority accepts the gift it must hold the land on the same trusts and subject to the same conditions as those on which it was held by the trustees, or on such other trusts and subject to such other conditions³ as may be agreed between the trustees and the local authority with the approval of the Charity Commission⁴.

Subject to the obligation that land transferred to a local authority must be used for the purposes of public recreation, the authority may hold the land as and for the purposes of an open space⁵.

1 As to the meaning of 'local authority' see PARA 569 note 6.

2 Open Spaces Act 1906 s 3(1) (amended by the Charities Act 2006 Sch 8 paras 11, 12). A special resolution (see PARA 569 note 2) is required: s 3(1).

3 Ie so that the land may be appropriated to the purposes of public recreation: Open Spaces Act 1906 s 3(1) (as amended: see note 2).

4 Open Spaces Act 1906 s 3(1) (as amended: see note 2). As to the Charity Commission see **CHARITIES** vol 8 (2010) PARA 538 et seq.

5 Open Spaces Act 1906 s 3(2). As to the meaning of 'open space' see PARA 504.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(6) TRANSFER OF MANAGEMENT FUNCTIONS TO LOCAL AUTHORITIES/573. Disused burial grounds.

573. Disused burial grounds.

The owner of a disused burial ground¹ may convey it or grant any term of years or other limited interest in it to any local authority² for the purpose of giving the public access to it and preserving it as an open space³ accessible to the public and under the control of the local authority⁴.

1 In relation to a burial ground, 'owner' means the person in whom the freehold of the burial ground is vested, whether as appurtenant or incident to any benefice or cure of souls or otherwise: Open Spaces Act 1906 s 20. As to the vesting of consecrated ground see *Re Tonbridge School Chapel (No 2)* [1993] Fam 281, [1993] 2 All ER 338. As to benefices see **ECCLESIASTICAL LAW** vol 14 PARA 768 et seq. 'Burial ground' includes any churchyard, cemetery or other ground, whether consecrated or not, which has been at any time set apart for the purpose of interment: Open Spaces Act 1906 s 20. As to burial grounds see **CREMATION AND BURIAL** vol 10 (Reissue) PARA 1001 et seq. 'Disused burial ground' means any burial ground which is no longer used for interments, whether or not the ground has been partially or wholly closed for burials under the provisions of a statute or Order in Council: s 20. As to disused burial grounds see **CREMATION AND BURIAL** vol 10 (Reissue) PARA 1162 et seq.

2 As to the meaning of 'local authority' see PARA 569 note 6.

3 As to the meaning of 'open space' see PARA 504.

4 See the Open Spaces Act 1906 s 6; and **CREMATION AND BURIAL** vol 10 (Reissue) PARA 1162.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(6) TRANSFER OF MANAGEMENT FUNCTIONS TO LOCAL AUTHORITIES/574. Conveyance by charity trustees.

574. Conveyance by charity trustees.

Where an open space¹ is vested in trustees² for any charitable purpose and as part of their trust estate, and it appears to the majority of the trustees that the open space is no longer required for the purposes of their trust or may with advantage to the trust be otherwise dealt with³, the trustees, in pursuance of a special resolution⁴, and in accordance with the relevant statutory provisions⁵, may convey or demise the open space to any local authority⁶ on such terms as may be agreed⁷. A court order may be made upon application by the trustees in the manner directed by rules of court⁸, and the court has discretion to make such order as appears proper⁹.

¹ As to the meaning of 'open space' see PARA 504.

² I.e. trustees other than those mentioned in the Open Spaces Act 1906 ss 2, 3 (see PARAS 569-572): s 4(1) (amended by the Charities Act 1960 Sch 6; and the Charities Act 2006 Sch 8 paras 11, 13(1), (2)).

³ I.e. under the Open Spaces Act 1906 s 4: s 4(1).

⁴ As to special resolutions see PARA 569 note 2.

⁵ I.e. the Open Spaces Act 1906 s 4(1A). The trustees act in accordance with s 4(1A) if they convey or demise the open space as mentioned in s 4(1): (1) with the sanction of an order of the Charity Commission or with that of an order of the court to be obtained as described below; or (2) in accordance with such provisions of the Charities Act 1993 s 36(2)-(8) (see **CHARITIES** vol 8 (2010) PARA 395) as are applicable: Open Spaces Act 1906 s 4(1A) (added by the Charities Act 2006 Sch 8 paras 11, 13(1), (3)). The court is either to be the High Court or the county court of the district in which the whole or any part of the open space is situated: Open Spaces Act 1906 s 4(2). The Charities Act 1993 s 89 (see **CHARITIES** vol 8 (2010) PARA 549) applies to any order of the Charity Commission under the Open Spaces Act 1906 s 4 as it applies to orders made by it under the Charities Act 1993: Open Spaces Act 1906 s 4(4) (added by the Charities Act 1993 Sch 6 para 2; and amended by the Charities Act 2006 Sch 8 paras 11, 13(1), (4)). As to the Charity Commission see **CHARITIES** vol 8 (2010) PARA 538 et seq.

⁶ As to the meaning of 'local authority' see PARA 569 note 6.

⁷ Open Spaces Act 1906 s 4(1) (as amended: see note 2).

⁸ At the date at which this volume states the law, no special rules had been made regulating the manner in which such an application is to be made. As to the civil procedure rules see the Civil Procedure Rules 1998, SI 1998/3132; and **CIVIL PROCEDURE**.

⁹ Open Spaces Act 1906 s 4(3). Before making an order the court may direct any inquiries to be made, or any consents and notices to be obtained and given, which seem expedient: s 4(3).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(6) TRANSFER OF MANAGEMENT FUNCTIONS TO LOCAL AUTHORITIES/575. Conveyance by corporations.

575. Conveyance by corporations.

Corporations or persons having power, either with or without the consent of any other corporation or persons, to sell land may convey the land, with that consent if it is required, to a local authority¹, for or without consideration, for use as a public open space², and the local authority may accept the land for that purpose³. The conveyance may be with or without conditions and the local authority may accept the land subject to such conditions⁴.

1 As to the meaning of 'local authority' see PARA 569 note 6.

2 As to the meaning of 'open space' see PARA 504.

3 Open Spaces Act 1906 s 7(1); Local Government Act 1972 s 1(11). Where a corporation having power under the Open Spaces Act 1906 s 7 to convey land is itself a local authority, the authority may appropriate its land as an open space for the enjoyment of the public, and with the necessary modification this provision applies to the appropriation as it applies to the conveyance: see s 7(2).

4 Open Spaces Act 1906 s 7(1).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(6) TRANSFER OF MANAGEMENT FUNCTIONS TO LOCAL AUTHORITIES/576. Conveyance by private owners.

576. Conveyance by private owners.

The owner of an open space¹, including a person having a term of years or other limited interest in it, subject to rights of user for exercise and recreation by the owners or occupiers² of any houses round or near it, whether the rights are secured by covenant or not, has, subject to the consent of those owners or occupiers³, powers of conveying or leasing the open space, in trust for the enjoyment of the public, to local authorities⁴, or entering into agreements with local authorities for its opening to the public and its care and management by the authority⁵.

1 As to the meaning of 'owner' see PARAS 569 note 3, 573 note 1. As to the meaning of 'open space' see PARA 504.

2 As to the meaning of 'occupier' see PARA 569 note 3.

3 This consent is to be signified by special resolution: see the Open Spaces Act 1906 s 5(1). As to special resolutions see PARA 569 note 2.

4 Open Spaces Act 1906 s 5(1)(a), (b), (2). As to the meaning of 'local authority' see PARA 569 note 6.

5 Open Spaces Act 1906 s 5(1)(c). Upon exercising any such powers the owner is discharged from liability to any person entitled to any right of user in respect of any act done in accordance with the consent so given: s 5(1). Where an open space is used as a place of exercise and recreation for the inhabitants of certain houses, and the property and right of user is vested in one or more persons as owners or occupiers of the houses, those owners and occupiers, if any, may convey to the local authority in trust for the public a right to enter upon, use and enjoy the open space subject to such terms and conditions as may be agreed upon: s 5(3).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/3. PUBLIC OPEN SPACES/(6) TRANSFER OF MANAGEMENT FUNCTIONS TO LOCAL AUTHORITIES/577. Powers of local authorities.

577. Powers of local authorities.

The powers of local authorities¹ under the Open Spaces Act 1906 to acquire and maintain open spaces, to make byelaws and to pay compensation are the same as the powers which they exercise under that Act in relation to burial grounds². Any two or more local authorities may jointly carry out the provisions of the Act³.

County councils may purchase or take on lease, lay out, plant, improve and maintain land for the purpose of being used as public walks or pleasure grounds; and they may support, or contribute to the support of, public walks or pleasure grounds provided by any person⁴.

1 As to the meaning of 'local authority' see PARA 569 note 6.

2 See the Open Spaces Act 1906 ss 9, 10, 13, 15; and **CREMATION AND BURIAL** vol 10 (Reissue) PARAS 1163-1169. These powers are exercisable over open spaces vested in the authority in pursuance of any statute or of which it is the owner: see s 12. Section 10 creates an express trust to hold and maintain open spaces acquired by local authorities and the power of sale contained in the Local Government Act 1972 ss 123, 127 (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 515, 520) does not, by virtue of s 131(1)(a), (4) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 509, 515), apply to land held thereunder: see *Laverstock Property Co Ltd v Peterborough Corpn* [1972] 3 All ER 678, [1972] 1 WLR 1400 (a decision on analogous provisions of the Local Government Act 1933); and see **CREMATION AND BURIAL** vol 10 (Reissue) PARA 1164.

3 Open Spaces Act 1906 s 16. For this purpose they may make any agreement for so doing and for defraying expenses, and any other local authority may defray the whole or any part of the expenses incurred by any local authority: s 16. As to the expenses of a local authority see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 514 et seq.

4 Open Spaces Act 1906 s 14; Local Government Act 1972 s 179(2).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/4. ACCESS TO THE COUNTRYSIDE/(1) STATUTORY RIGHTS OF ACCESS/(i) Introduction to Statutory Access/578. The statutory scheme.

4. ACCESS TO THE COUNTRYSIDE

(1) STATUTORY RIGHTS OF ACCESS

(i) Introduction to Statutory Access

578. The statutory scheme.

The National Parks and Access to the Countryside Act 1949 provides for public access to the open country¹ by agreement or order².

The Countryside and Rights of Way Act 2000 further provides a statutory right of access for open-air recreation to mountain, moor, heath, down and registered common land³.

The Marine and Coastal Access Act 2009 provides for the establishment of a long distance route⁴ along the coast, and in connection with that a coastal margin which will be access land⁵ for the purposes of the Countryside and Rights of Way Act 2000⁶.

1 As to the meaning of 'open country' see PARA 582.

2 See the National Parks and Access to the Countryside Act 1949 Pt V (ss 59-83); and PARA 582 et seq.

3 See the Countryside and Rights of Way Act 2000 Pt I Ch I (ss 1-20); and PARA 580 et seq. This right of access is subject to exclusions or restrictions of access under Pt I Ch II (ss 21-33): see PARA 594 et seq. References in Pt I Ch II to the exclusion or restriction of access to any land by virtue of s 2(1) are to be interpreted in accordance with s 21(2), (3): s 21(1). A person excludes access by virtue of s 2(1) to any land where he excludes the application of s 2(1) in relation to that land: s 21(2). A person restricts access by virtue of s 2(1) to any land where he provides that the right conferred by s 2(1): (1) is exercisable only along specified routes or ways; (2) is exercisable only after entering the land at a specified place or places; (3) is exercisable only by persons who do not take dogs on the land; or (4) is exercisable only by persons who satisfy any other specified conditions: s 21(3).

As to access to common land see further PARA 568; and **COMMONS** (2009) vol 13 PARA 580 et seq. A scheme for the regulation and management of a non-metropolitan common may provide for free access to a particular point of view and may permit the playing games, etc: see the Commons Act 1876 s 7; the Commons Act 1899 s 1(2); and **COMMONS** vol 13 (2009) PARA 591.

4 As to long distance routes see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 696 et seq.

5 As to the meaning of 'access land' see PARA 580.

6 See PARA 628 et seq.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/4. ACCESS TO THE COUNTRYSIDE/(1) STATUTORY RIGHTS OF ACCESS/(i) Introduction to Statutory Access/579. Distinction between statutory rights and customary or common law rights.

579. Distinction between statutory rights and customary or common law rights.

A general right of access for recreational purposes can only be given by statute¹ and should be distinguished from a customary right of the inhabitants of a certain area to use common land for certain purposes² or to use town or village greens for recreation³ and from the common law right of the public to pass and repass along a highway⁴.

The right of access over land⁵ should also be distinguished from the common law right of navigation over tidal waters⁶, which may be exercised for recreation; there is no general right of navigation over navigable non-tidal or inland waters⁷.

1 See PARA 578.

2 See PARA 532; and **COMMONS** vol 13 (2009) PARA 401 et seq.

3 See PARA 532 et seq.

4 See PARA 505; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 197.

5 In principle this could include land covered by water: see the Interpretation Act 1978 Sch 1. Terms such as mountain, moor, heath and down would not normally include land covered by water although they could include mountain streams, ponds and the like. Coastal margin (see PARA 580 note 7) may include foreshore which is covered by water twice a day.

6 See **WATER AND WATERWAYS** vol 101 (2009) PARA 689 et seq.

7 See *A-G (ex rel Yorkshire Derwent Trust Ltd) v Brotherton* [1992] 1 AC 425, [1992] 1 All ER 230; and **WATER AND WATERWAYS** vol 101 (2009) PARA 701.

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580. Meaning of 'access land'.

'Access land' is land which:

- 47 (1) is shown as open country¹ on a map in conclusive form issued by the appropriate countryside body²;
- 48 (2) is shown on such a map as registered common land³;
- 49 (3) is registered common land in any area outside Inner London⁴ for which no such map relating to registered common land has been issued⁵;
- 50 (4) is situated more than 600 metres above sea level in any area for which no such map relating to open country has been issued⁶;
- 51 (5) is coastal margin⁷; or
- 52 (6) is dedicated⁸,

but does not, in any of those cases, include excepted land⁹ or land which is treated as being accessible to the public¹⁰.

These provisions bind the Crown¹¹.

1 As to the meaning of 'open country' see PARA 582.

2 Countryside and Rights of Way Act 2000 s 1(1)(a). 'Appropriate countryside body' means, in relation to England, Natural England or, in relation to Wales, the Countryside Council for Wales: s 1(2) (definition amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 154). As to Natural England see PARA 523; and as to the Countryside Council for Wales see PARA 524.

3 Countryside and Rights of Way Act 2000 s 1(1)(b). 'Registered common land' means: (1) land which is registered as common land under the Commons Registration Act 1965 and whose registration under the Commons Registration Act 1965 has become final (Countryside and Rights of Way Act 2000 s 1(3)(a)); or (2) subject to s 1(4), land which fell within head (1) on 30 November 2000 (ie the day on which the Countryside and Rights of Way Act 2000 was passed) or at any time after that day but has subsequently ceased to be registered as common land under the Commons Registration Act 1965 on the register of common land in which it was included being amended by reason of the land having ceased to be common land within the meaning of the Commons Registration Act 1965 (Countryside and Rights of Way Act 2000 s 1(3)(b)). As from a day to be appointed, the definition of 'registered common land' is substituted so as to refer to land which is registered as common land in a register of common land kept under the Commons Act 2006 Pt 1 (ss 1-25) but which is not coastal margin: Countryside and Rights of Way Act 2000 s 1(3)(a) (s 1(3)(a) prospectively substituted, and s 1(3)(b) prospectively repealed, by the Commons Act 2006 Sch 5 para 7(1), (2); and the Countryside and Rights of Way Act 2000 s 1(3)(a) amended by the Marine and Coastal Access Act 2009 s 303). The Countryside and Rights of Way Act 2000 s 1(3) does not apply where: (a) the amendment of the register of common land was made in pursuance of an application made before 30 November 2000 (ie the day on which the Countryside and Rights of Way Act 2000 was passed) (s 1(4)(a)); or (b) the land ceased to be common land by reason of the exercise of: (i) any power of compulsory purchase, of appropriation or of sale which is conferred by an enactment (s 1(4)(b)(i)); (ii) any power so conferred under which land may be made common land within the meaning of the Commons Registration Act 1965 in substitution for other land (Countryside and Rights of Way Act 2000 s 1(4)(b)(ii)). As from a day to be appointed, s 1(4) is repealed by the Commons Act 2006 Sch 5 para 7(1), (3), Sch 6 Pt 1. At the date at which this volume states the law, no such day had been appointed. As to common land see **COMMONS**. As to access to common land see further PARA 568; and **COMMONS** vol 13 (2009) PARA 580 et seq.

4 'Inner London' means the area comprising the inner London boroughs, the City of London, the Inner Temple and the Middle Temple: Countryside and Rights of Way Act 2000 s 45(1). As to the Inner London boroughs see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 30; as to the City of London see **LONDON**

GOVERNMENT vol 29(2) (Reissue) PARA 31; and as to the Temples see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 32.

5 Countryside and Rights of Way Act 2000 s 1(1)(c).

6 Countryside and Rights of Way Act 2000 s 1(1)(d).

7 Countryside and Rights of Way Act 2000 s 1(1)(da) (amended by the Marine and Coastal Access Act 2009 s 303, Sch 22 Pt 7).

'Coastal margin' means land which is of a description specified by an order under the Countryside and Rights of Way Act 2000 s 3A: ss 1(2), 45 (definition added by the Marine and Coastal Access Act 2009 s 303). The Secretary of State may by order specify the descriptions of land in England which are coastal margin for the purposes of the Countryside and Rights of Way Act 2000 Pt 1 (ss 1-46): see s 3A (added by the Marine and Coastal Access Act 2009 s 303). At the date at which this volume states the law, no such order had been made. As to the Secretary of State see PARA 519.

8 Countryside and Rights of Way Act 2000 s 1(1)(e). 'Dedicated' means land dedicated as access land under s 16: s 1(1)(e).

A person who, in respect of any land, holds:

44 (1) the fee simple absolute in possession (s 16(1)(a)); or

45 (2) a legal term of years absolute of which not less than 90 years remain unexpired (s 16(1)(b)),

may, by taking such steps as may be prescribed, dedicate the land for the purposes of Pt I (ss 1-46), whether or not it would be access land apart from s 16: s 16(1). Where any person other than the person making the dedication holds:

46 (a) any leasehold interest in any of the land to be dedicated (s 16(2)(a)); or

47 (b) such other interest in any of that land as may be prescribed (s 16(2)(b)),

the dedication must be made jointly with that other person, in such manner as may be prescribed, or with his consent, given in such manner as may be prescribed: s 16(2). 'Interest', in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an estate or interest in land or by virtue of a licence or agreement, and in particular includes rights of common and sporting rights, and references to 'a person interested in land' is to be construed accordingly: s 45(1). In relation to a dedication under s 16 by virtue of s 16(1)(b), the reference in s 16(2)(a) to a leasehold interest does not include a reference to a leasehold interest superior to that of the person making the dedication: s 16(3). A dedication made under s 16 by virtue of s 16(1)(b) is to have effect only for the remainder of the term held by the person making the dedication: s 16(4).

Where a person makes a dedication under s 16 in respect of:

48 (i) land which is coastal margin; or

49 (ii) any other land in England which is adjacent to land which is coastal margin,

that dedication may also dedicate the land as coastal margin: s 16(2A), (2B) (s 16(2A)-(2C) added by the Marine and Coastal Access Act 2009 s 303). Where land is dedicated as coastal margin, in the case of land within head (ii), it is to be treated as coastal margin for the purposes of any provision made by or by virtue of the Countryside and Rights of Way Act 2000 Pt I (other than s 1); and if, disregarding s 16(2C), it would be excepted land and it is not land which is accessible to the public by virtue of any enactment or rule of law (other than the Countryside and Rights of Way Act 2000), it is to be treated for the purposes of any provision made by or by virtue of Pt I as if it were not excepted land: s 16(2C) (as so added).

The Forestry Act 1967 Sch 2 (power for tenant for life and others to enter into forestry dedication covenants: see **FORESTRY** vol 52 (2009) PARA 116-119) applies to dedications under the Countryside and Rights of Way Act 2000 s 16 as it applies to forestry dedication covenants: s 16(5).

Regulations may: (A) prescribe the form of any instrument to be used for the purposes of s 16 (s 16(6)(a)); (B) enable a dedication under s 16 to include provision removing or relaxing any of the general restrictions in Sch 2 (see PARA 583) in relation to any of the land to which the dedication relates (s 16(6)(b)); (C) enable a dedication previously made under s 16 to be amended by the persons by whom a dedication could be made, so as to remove or relax any of those restrictions in relation to any of the land to which the dedication relates (s 16(6)(c)); (D) in the case of land within s 16(2B) (see heads (i), (ii)), enable a dedication previously made under s 16 in respect of the land (otherwise than by virtue of s 16(2A)) to be amended, by the persons by whom a dedication could be made, so as to provide that the land is dedicated as coastal margin for the purposes of s

16(2C) (s 16(6)(ca) (added by the Marine and Coastal Access Act 2009 s 303)); (E) provide for any exclusion or restriction under Pt I Ch II of access by virtue of s 2(1) which has effect in relation to land which is within s 16(2B)(b) (see head (ii)) immediately before it is dedicated as coastal margin to cease to have effect at the time the dedication takes effect (s 16(6)(cb) (added by the Marine and Coastal Access Act 2009 s 303)); and (F) require any dedication under s 16, or any amendment of such a dedication by virtue of head (C), to be notified to the appropriate countryside body and to the access authority (s 16(6)(d)). In head (E), the reference to the exclusion or restriction under Pt I Ch II of access to any land by virtue of s 2(1) is to be interpreted in accordance with s 21(2), (3) (see PARA 578 note 3): s 16(6A) (added by the Marine and Coastal Access Act 2009 s 303). As to the meaning of 'access authority' see PARA 590. As to the regulations that have been made see the Access to the Countryside (Dedication of Land) (England) Regulations 2003, SI 2003/2004; and the Countryside Access (Dedication of Land as Access Land) (Wales) Regulations 2003, SI 2003/135.

A dedication under the Countryside and Rights of Way Act 2000 s 16 is irrevocable and, subject to s 16(4), binds successive owners and occupiers of, and other persons interested in, the land to which it relates, but nothing in s 16 prevents any land from becoming excepted land (see note 9): s 16(7). A dedication under s 16 is a local land charge: s 16(8). As to local land charges generally see **LAND CHARGES** vol 26 (2004 Reissue) PARA 671 et seq.

9 'Excepted land' means land which is for the time being of any of the descriptions specified in the Countryside and Rights of Way Act 2000 Sch 1 Pt I (see PARA 584), those descriptions having effect subject to Sch 1 Pt II (see PARA 584): s 1(2).

10 Countryside and Rights of Way Act 2000 s 1(1). For these purposes, land is treated as being accessible to the public where: (1) the Law of Property Act 1925 s 193 (rights of the public over commons and waste lands: see **COMMONS** vol 13 (2009) PARA 581) applies to it (Countryside and Rights of Way Act 2000 s 15(1)(a)); (2) by virtue of a local or private Act or a scheme made under the Commons Act 1899 Pt I (ss 1-15) (see **COMMONS** vol 13 (2009) PARAS 427, 590-598) (as read with the Countryside and Rights of Way Act 2000 s 15(2)), members of the public have a right of access to it at all times for the purposes of open-air recreation (however described) (s 15(1)(b)); (3) an access agreement or access order under the National Parks and Access to the Countryside Act 1949 Pt V (ss 59-83) (see PARA 581 et seq) is in force with respect to it (Countryside and Rights of Way Act 2000 s 15(1)(c)); or (4) the public have access to it under the Ancient Monuments and Archaeological Areas Act 1979 s 19(1) (public access to monuments under public control: see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1037) or would have access to it under s 19(1) but for any provision of s 19(2)-(9) (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1037) (Countryside and Rights of Way Act 2000 s 15(1)(d)). Where a local or private Act or a scheme made under the Commons Act 1899 Pt I (see **COMMONS** vol 13 (2009) PARAS 427, 590-598) confers on the inhabitants of a particular district or neighbourhood (however described) a right of access to any land for the purposes of open-air recreation (however described), the right of access exercisable by those inhabitants in relation to that land is by virtue of the Countryside and Rights of Way Act 2000 s 15(2) exercisable by members of the public generally: Countryside and Rights of Way Act 2000 s 15(2).

11 Countryside and Rights of Way Act 2000 s 43(1). The provisions of Pt I bind the Crown: s 43(1). No contravention by the Crown of any provision of Pt I makes the Crown criminally liable; but the High Court may declare unlawful any act or omission of the Crown which constitutes such a contravention: s 43(2). The provisions of Pt I apply to persons in the public service of the Crown as they apply to other persons: s 43(3).

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581. Methods of enabling access: access agreements, access orders and compulsory acquisition.

To enable the public to have access for open-air recreation¹ to the open country² any of the following methods may be used:

- 53 (1) the making of an agreement, called an 'access agreement', with any person having an interest in the land³;
- 54 (2) the making of an order, called an 'access order', in respect of the land⁴; or
- 55 (3) the compulsory acquisition of the land⁵.

1 For these purposes, 'open-air recreation' does not include organised games: National Parks and Access to the Countryside Act 1949 s 114(1).

2 As to the meaning of 'open country' see PARA 582.

3 See the National Parks and Access to the Countryside Act 1949 s 59(1)(a). As to the meaning of 'land' see PARA 636 note 1. As to the making of access agreements see PARA 615.

4 See the National Parks and Access to the Countryside Act 1949 s 59(1)(a). As to the making of access orders see PARA 616.

5 See the National Parks and Access to the Countryside Act 1949 s 59(1)(b). As to compulsory acquisition see PARAS 633-634.

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582. Meaning of 'open country'.

In relation to the National Parks and Access to the Countryside Act 1949, 'open country' means any area appearing to the local planning authority¹ with which an access agreement² is made or to the authority by which an access order³ is made or by which the area is acquired, as the case may be, to consist wholly or predominantly of mountain, moor, heath, down, cliff or foreshore, including any bank, barrier, dune, beach, flat or other land adjacent to the foreshore⁴. For these purposes, 'open country' includes, if in the countryside, woodlands⁵, any river⁶ or canal⁷, any expanse of water through which a river or part of it runs⁸, and a strip of the adjacent land⁹ on both sides of any river or canal, or of any such expanse of water of reasonable width, and, where a highway crosses or comes close to the river, canal or other water, so much of any land connecting the highway with the strip of land as would, if included together with the strip in an access agreement or order, afford access from the highway to some convenient launching place for small boats¹⁰.

In relation to the Countryside and Rights of Way Act 2000, 'open country' means land which appears to the appropriate countryside body¹¹ to consist wholly or predominantly of mountain¹², moor, heath or down¹³, and is not registered common land or coastal margin¹⁴.

¹ As to the meaning of 'local planning authority' see PARA 636 note 12.

² As to the meaning of 'access agreement' see PARA 581.

³ As to the meaning of 'access order' see PARA 581.

⁴ National Parks and Access to the Countryside Act 1949 s 59(2). The provisions of ss 59-73 apply to waterways in a national park as they apply to open country: s 74. As to the meaning of 'waterway' see PARA 646 note 10. As to national parks see PARA 636 et seq.

⁵ Countryside Act 1968 s 16(1). Section 16 in no way restricts the definition of 'open country' in the National Parks and Access to the Countryside Act 1949 s 59(2) (see the text and notes 1-4): Countryside Act 1968 s 16(10). Sections 16, 18, 20 are to be construed as one with the National Parks and Access to the Countryside Act 1949 Pt V (ss 59-83): Countryside Act 1968 s 16(11).

⁶ 'River' includes a stream and the tidal part of a river or stream: Countryside Act 1968 s 16(9).

⁷ Countryside Act 1968 s 16(2)(a). However, s 16(2), (3) does not apply as respects, or as respects land held with, a reservoir owned or managed by statutory undertakers (s 16(6)(a)) or a canal or part of a canal owned or managed by the British Waterways Board which is for the time being a commercial waterway or a cruising waterway within the meaning of the Transport Act 1968 s 104 (see **WATER AND WATERWAYS** vol 101 (2009) PARA 741) (Countryside Act 1968 s 16(6)(c) (amended by the Transport Act 1968 s 111)). As to the meaning of 'statutory undertakers' see PARA 649 note 3. As to the British Waterways Board see PARA 530; and **WATER AND WATERWAYS** vol 101 (2009) PARA 725 et seq.

⁸ Countryside Act 1968 s 16(2)(b). See also note 7.

⁹ The strip of adjacent land comprised in an access order must be wide enough to allow foot passage along the water and to allow the public to picnic at convenient places and, where practicable, to embark or disembark: Countryside Act 1968 s 16(3). It must include the banks, walls or embankments along the water (s 16(3)(a)), and any towpath or other way or track beside the water (s 16(3)(b)). See also note 7. Local planning authorities must exercise their powers under the National Parks and Access to the Countryside Act 1949 Pt V (ss 59-83) over any such strip of land with special regard to the interests of persons using small boats who must circumvent obstacles or obstructions on the water by passing round on foot with their boats, and of persons wishing to obtain access from a highway so as to launch small boats: Countryside Act 1968 s 16(4). Section 16 has effect as if the Broads Authority were a local planning authority and the Broads were a national park: s

47A(3) (s 47A added by the Norfolk and Suffolk Broads Act 1988 Sch 3 para 6). As to the Broads Authority see PARA 531.

10 Countryside Act 1968 s 16(2)(c). See also note 7.

11 As to the meaning of 'appropriate countryside body' see PARA 580 note 2.

12 'Mountain' includes, subject to the definition set out in note 13, any land situated more than 600 metres above sea level: Countryside and Rights of Way Act 2000 s 1(2).

13 'Mountain, moor, heath or down' does not include land which appears to the appropriate countryside body to consist of improved or semi-improved grassland: Countryside and Rights of Way Act 2000 s 1(2).

14 Countryside and Rights of Way Act 2000 s 1(2) (amended by the Marine and Coastal Access Act 2009 s 303). As to the meaning of 'registered common land' see PARA 580 note 3. As to the meaning of 'coastal margin' see PARA 580 note 7. The Welsh Ministers may by order amend the definition of 'open country' so as to include, as respects Wales, a reference to coastal land or to coastal land of any description: Countryside and Rights of Way Act 2000 s 3(1). Such an order may: (1) make consequential amendments of other provisions of Pt I (ss 1-46); and (2) modify the provisions of Pt I in their application to land which is open country merely because it is coastal land: s 3(2). At the date at which this volume states the law, no such order had been made. For the purposes of s 3, 'coastal land' means: (a) the foreshore; and (b) land adjacent to the foreshore (including in particular any cliff, bank, barrier, dune, beach or flat which is adjacent to the foreshore): s 3(3).

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583. Rights of access for open-air recreation.

In general, a person who enters or is on land¹ comprised in an access agreement or order² for the purpose of open-air recreation³, without breaking or damaging any wall, fence, hedge or gate, or who is on such land for that purpose having so entered it, is not to be treated as a trespasser⁴ or to incur any other liability by reason only of entering or being on the land⁵. This immunity does not, however, apply to excepted land⁶; nor does it entitle a person to enter or be on any land, or do anything on it, in contravention of any prohibition contained in, or having effect under, any enactment⁷. Furthermore, an access agreement or order may specify or provide for imposing restrictions subject to which persons may enter or be upon the land⁸, and, in addition, certain general restrictions⁹ must be observed by all persons having access to the land¹⁰.

Any person is entitled to enter and remain on any access land for the purposes of open-air recreation, if and so long as he does so without breaking or damaging any wall, fence, hedge, stile or gate¹¹, and he observes the general restrictions¹² and any other restrictions imposed in relation to the land¹³. If a person becomes a trespasser on any access land by failing to comply with these restrictions¹⁴ he may not, within 72 hours after leaving that land, exercise his right to enter that land again or to enter other land in the same ownership¹⁵. The use of any land by the inhabitants of any locality for the purposes of open-air recreation in the exercise of the right to enter and remain is to be disregarded in determining whether the land has become a town or village green¹⁶.

It is unlawful for any person concerned with the provision of facilities to the public (including access to and use of any place which members of the public are permitted to enter¹⁷) to discriminate¹⁸ on racial grounds¹⁹, or on grounds of sex or sexual orientation, against a person who wishes to use those facilities, or to apply different conditions to that person²⁰. It is also unlawful for any person who provides services (including access to and use of any place which members of the public are permitted to enter²¹) to discriminate²² against a disabled person:

- 56 (1) in refusing to provide, or deliberately not providing, to the disabled person any service which he provides, or is prepared to provide, to members of the public²³;
- 57 (2) in failing to comply with any duty imposed on him²⁴ in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person to make use of any such service²⁵;
- 58 (3) in the standard of service which he provides to the disabled person or the manner in which he provides it to him²⁶; or
- 59 (4) in the terms on which he provides a service to the disabled person²⁷.

1 As to the meaning of 'land' see PARA 636 note 1.

2 As to the meanings of 'access agreement' and 'access order' see PARA 581.

3 As to the meaning of 'open-air recreation' see PARA 581 note 1.

4 However, a person entering on any premises in exercise of rights conferred by virtue of an access agreement or order is not a visitor of the occupier of those premises for the purposes of the Occupiers' Liability Act 1957: see s 1(4); PARA 585; and **NEGLIGENCE** vol 78 (2010) PARA 31.

5 See the National Parks and Access to the Countryside Act 1949 s 60(1), which is expressed to be subject to the subsequent provisions of Pt V (ss 59-83).

6 National Parks and Access to the Countryside Act 1949 s 60(1) proviso. As to the meaning of 'excepted land' see PARA 584.

7 National Parks and Access to the Countryside Act 1949 s 60(2). The powers of making byelaws and appointing wardens conferred by ss 90, 92 (see PARAS 648, 650) apply to land or a waterway comprised in an access agreement or order or acquired for the purpose of giving rights of access to the public, as they do to a national park or place of outstanding natural beauty: see PARA 648. As to national parks see PARA 636 et seq. As to areas of outstanding natural beauty see PARA 658 et seq.

8 National Parks and Access to the Countryside Act 1949 s 60(3). In particular, the restriction may exclude the land or any part of it at particular times from the operation of s 60(1): s 60(3).

9 These general restrictions exclude the National Parks and Access to the Countryside Act 1949 s 60(1) in relation to a person who, in or upon the land in question: (1) drives or rides any vehicle (Sch 2 para 1(a)); (2) lights any fire or does any act likely to cause a fire (Sch 2 para 1(b)); (3) takes, or allows to enter or remain, any dog not under proper control (Sch 2 para 1(c)); (4) wilfully kills, takes, molests or disturbs any animal, bird or fish or takes or injures any eggs or nests (Sch 2 para 1(d)); (5) bathes in any non-tidal water in contravention of an official notice (Sch 2 para 1(e)); (6) engages in any operations of or connected with hunting, shooting, fishing, snaring, taking or destroying any animals, birds or fish (Sch 2 para 1(f)); (7) wilfully damages the land or anything on it or in it (Sch 2 para 1(g)); (8) wilfully injures, removes or destroys any plant, shrub, tree or root or part of it (Sch 2 para 1(h)); (9) obstructs the flow of any drain or watercourse, opens, shuts or interferes with any sluice gate or other apparatus, breaks through any hedge, fence or wall or neglects to shut or fasten any gate (Sch 2 para 1(i)); (10) affixes or writes any advertisement, bill, placard or notice (Sch 2 para 1(j)); (11) deposits rubbish or leaves litter (Sch 2 para 1(k)); (12) engages in riotous, disorderly or indecent conduct (Sch 2 para 1(l)); (13) wantonly disturbs, annoys or obstructs any person engaged in any lawful occupation (Sch 2 para 1(m)); (14) holds any political meeting or delivers any political address (Sch 1 para 1(n)); or (15) hinders or obstructs any person interested in the land or any person acting under his authority in the exercise of any right or power vested in him (Sch 2 para 1(o)). Subject to consequential modifications heads (3)-(15) apply also to waterways: see Sch 2 para 2.

10 National Parks and Access to the Countryside Act 1949 s 60(4).

11 Countryside and Rights of Way Act 2000 s 2(1)(a). Section 2(1) does not entitle a person to enter or be on any land, or do anything on any land, in contravention of any relevant statutory prohibition contained in or having effect under any enactment, other than an enactment contained in a local or private Act: s 2(3) (amended by the Marine and Coastal Access Act 2009 s 303). 'Relevant statutory prohibition' means, in the case of land which is coastal margin, a prohibition contained in or having effect under any enactment, and, in any other case, a prohibition contained in or having effect under any enactment other than an enactment contained in a local or private Act: Countryside and Rights of Way Act 2000 s 2(3A) (added by the Marine and Coastal Access Act 2009 s 303).

The Countryside and Rights of Way Act 2000 s 2(1) has effect subject to s 2(3), (4) (see the text and notes 14-15): s 2(5).

Where an enactment is contained in an Act passed before or in the same Session as the Countryside and Rights of Way Act 2000, and relates to things done, or omitted to be done, in public places or places to which the public have access, regulations may provide that, in determining for the purposes of that enactment whether a place is a public place or a place to which the public have access, the right conferred by s 2(1), or access by virtue of that right, is to be disregarded, either generally or in prescribed cases: see s 42.

A person who is authorised by the appropriate countryside body to do so may enter any land for the purpose of ascertaining whether members of the public are permitted to exercise the right conferred under s 2(1): s 40(1)(c). As to the meaning of 'appropriate countryside body' see PARA 580 note 2. A person who is authorised by a national park authority to do so may enter any land for the purpose of determining whether members of the public are being permitted to exercise the right conferred by s 2(1): s 40(3)(b).

A person acting in the exercise of a power conferred by s 40 may: (1) use a vehicle to enter the land (s 40(5)(a)); (2) take a constable with him if he reasonably believes he is likely to be obstructed (s 40(5)(b)); (3) take with him equipment and materials needed for the purpose for which he is exercising the power of entry (s 40(5)(c)); and (4) take samples of the land and of anything on it (s 40(5)(d)). If in the exercise of a power conferred by s 40 a person enters land which is unoccupied or from which the occupier is temporarily absent, he must on his departure leave it as effectively secured against unauthorised entry as he found it: s 40(6). A person authorised under s 40 to enter upon any land must, if so required, produce evidence of his authority before entering, and must produce such evidence if required to do so at any time while he remains on the land: s 40(7). A person must not under s 40 demand admission as of right to any occupied land, other than access land, unless: (a) at least 24 hours' notice of the intended entry has been given to the occupier (s 40(8)(a)); or (b) it is not reasonably practicable to give such notice (s 40(8)(b)); or (c) the entry is for the purpose specified in

s 40(2)(b) and s 40(3)(e) (see PARA 608) (s 40(8)(c)). The rights conferred by s 40 are not exercisable in relation to a dwelling: s 40(9). A person who intentionally obstructs a person acting in the exercise of his powers under s 40 is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 40(10). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

It is the duty of a body by which an authorisation may be given under s 40 to compensate any person who has sustained damage as a result of the exercise of a power conferred by s 40 by a person authorised by that body to do so, or the failure of a person so authorised to perform the duty imposed on him by s 40(6), except where the damage is attributable to the fault of the person who sustained it: s 41(1).

Any dispute as to a person's entitlement to compensation under s 41 or as to its amount is to be referred to an arbitrator to be appointed in default of agreement, as respects entry on land in England, by the Secretary of State or, as respects entry on land in Wales, by the Welsh Ministers: s 41(2). As to the Secretary of State and the Welsh Ministers see PARA 519.

12 The general restrictions exclude the Countryside and Rights of Way Act 2000 s 2(1) in relation to a person who, in or upon the land in question: (1) drives or rides any vehicle other than an invalid carriage as defined by the Chronically Sick and Disabled Persons Act 1970 s 20(2) (see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 215) (Countryside and Rights of Way Act 2000 Sch 2 para 1(a)); (2) uses a vessel or sailboard on any non-tidal water (Sch 2 para 1(b)); (3) has with him any animal other than a dog (Sch 2 para 1(c)); (4) commits any criminal offence (Sch 2 para 1(d)); (5) lights or tends a fire or does any act which is likely to cause a fire (Sch 2 para 1(e)); (6) intentionally or recklessly takes, kills, injures or disturbs any animal, bird or fish (Sch 2 para 1(f)); (7) intentionally or recklessly takes, damages or destroys any eggs or nests (Sch 2 para 1(g)); (8) feeds any livestock (Sch 2 para 1(h)); (9) bathes in any non-tidal water (Sch 2 para 1(i)); (10) engages in any operations of or connected with hunting, shooting, fishing, trapping, snaring, taking or destroying of animals, birds or fish or has with him any engine, instrument or apparatus used for hunting, shooting, fishing, trapping, snaring, taking or destroying animals, birds or fish (Sch 2 para 1(j)); (11) uses or has with him any metal detector (Sch 2 para 1(k)); (12) intentionally removes, damages or destroys any plant, shrub, tree or root or any part of a plant, shrub, tree or root (Sch 2 para 1(l)); (13) obstructs the flow of any drain or watercourse, or opens, shuts or otherwise interferes with any sluice-gate or other apparatus (Sch 2 para 1(m)); (14) without reasonable excuse, interferes with any fence, barrier or other device designed to prevent accidents to people or to enclose livestock (Sch 2 para 1(n)); (15) neglects to shut any gate or to fasten it where any means of doing so is provided, except where it is reasonable to assume that a gate is intended to be left open (Sch 2 para 1(o)); (16) affixes or writes any advertisement, bill, placard or notice (Sch 2 para 1(p)); (17) in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land, does anything which is intended by him to have the effect: (a) of intimidating those persons so as to deter them or any of them from engaging in that activity (Sch 2 para 1(q)(i)); (b) of obstructing that activity (Sch 2 para 1(q)(ii)); or (c) of disrupting that activity (Sch 2 para 1(q)(iii)); (18) without reasonable excuse, does anything which (whether or not intended by him to have the effect mentioned in head (17)) disturbs, annoys or obstructs any persons engaged in a lawful activity on the land (Sch 2 para 1(r)); (19) engages in any organised games, or in camping, hang-gliding or para-gliding (Sch 2 para 1(s)); or (20) engages in any activity which is organised or undertaken (whether by him or another) for any commercial purpose (Sch 2 para 1(t)). 'Metal detector' means any device designed or adapted for detecting or locating any metal or mineral in the ground: Sch 2 para 2(1). For the purposes of heads (17)-(18), 'lawful activity' means activity on any occasion on the part of a person or persons on land if he or they may engage in the activity on the land on that occasion without committing an offence or trespassing on the land: Sch 2 para 2(2). During the period beginning with 1 March and ending with 31 July in each year, s 2(1) does not entitle a person to be on any land if he takes, or allows to enter or remain, any dog which is not on a short lead: Sch 2 para 4. Whatever the time of year, s 2(1) does not entitle a person to be on any land if he takes, or allows to enter or remain, any dog which is not on a short lead and which is in the vicinity of livestock: Sch 2 para 5. 'Short lead' means a lead of fixed length and of not more than two metres: Sch 2 para 6.

Regulations may amend Sch 2 paras 1, 2: Sch 2 para 3.

The relevant authority may by direction, and with the consent of the owner of any land, remove or relax any of the restrictions imposed by Sch 2 paras 1, 4 and 5 in relation to that land, either indefinitely or during a specified period: see Sch 2 para 7. 'Owner', in relation to land which is subject to a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (see **AGRICULTURAL LAND** vol 1 (2008) PARA 302) or a tenancy to which the Agricultural Holdings Act 1986 (see **AGRICULTURAL LAND** vol 1 (2008) PARA 321 et seq) applies, means the tenant under that tenancy: Countryside and Rights of Way Act 2000 s 21(4). 'Relevant authority', in relation to any land in a national park, means the national park authority; and, in relation to any other land, means the appropriate countryside body: s 21(5). As to the meaning of 'appropriate countryside body' see PARA 580 note 2. Where it appears to the Forestry Commissioners that any land which is dedicated for the purposes of Pt I (ss 1-46) under s 16 (see PARA 580 note 8) consists wholly or predominantly of woodland, and the Forestry Commissioners give to the body which is apart from s 21(6) the relevant authority for the purposes of Pt I Ch II (ss 21-33) in relation to the land a notice stating that the Forestry Commissioners are to be the relevant authority for those purposes as from a date specified in the notice, the Forestry Commissioners as from that date become the relevant authority in relation to that land for those purposes: s 21(6). However, where it appears to the Forestry Commissioners that any land in relation to which they are by virtue of s 21(6) the relevant authority for the purposes of Pt I Ch II has ceased to consist wholly or predominantly of woodland, the Forestry Commissioners may, by giving notice to the body who would apart from s 21(6) be the relevant

authority, revoke the notice as from a date specified in the notice: s 21(7). As to the Forestry Commissioners see PARA 529; and **FORESTRY** vol 52 (2009) PARA 34 et seq.

13 Countryside and Rights of Way Act 2000 s 2(1)(b). The text refers to other restrictions imposed under ss 21-33 (see PARA 594 et seq). See note 11.

14 Ie the Countryside and Rights of Way Act 2000 s 2(1)(a), Sch 2 (see PARA 583), and any other restrictions imposed in relation to the land under ss 21-33 (see PARA 594 et seq).

15 Countryside and Rights of Way Act 2000 s 2(4). For these purposes, 'owner', in relation to any land which is subject to a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (see **AGRICULTURAL LAND** vol 1 (2008) PARA 302) or a tenancy to which the Agricultural Holdings Act 1986 (see **AGRICULTURAL LAND** vol 1 (2008) PARA 321 et seq) applies, means the tenant under that tenancy; and 'ownership' is to be construed accordingly: Countryside and Rights of Way Act 2000 s 2(5).

16 Countryside and Rights of Way Act 2000 s 12(4). As to town or village greens see PARA 532 et seq.

17 See the Race Relations Act 1976 s 20(2)(a); the Sex Discrimination Act 1975 s 29(2)(a); and the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 4(2)(a).

18 As to the meaning of 'discrimination' for these purposes see the Race Relations Act 1976 ss 1, 2, 3(3)(a); the Sex Discrimination Act 1975 ss 1-4, 5(1)(a); the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, regs 2(1), 3; and **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 344 et seq, 439 et seq, 753.

19 'Racial grounds' means any of the following grounds: colour, race, nationality, or ethnic or national origins: Race Relations Act 1976 s 3(1).

20 See the Race Relations Act 1976 s 20(1); the Sex Discrimination Act 1975 s 29(1); the Equality Act (Sexual Orientation) Regulations 2007, SI 2007/1263, reg 4(1); and **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 382, 461, 753.

21 See the Disability Discrimination Act 1995 s 19(3)(a).

22 As to the meaning of 'discrimination' for these purposes see the Disability Discrimination Act 1995 s 20; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 582.

23 See the Disability Discrimination Act 1995 s 19(1)(a); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 585.

24 Ie imposed under the Disability Discrimination Act 1995 s 21: see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 586.

25 See the Disability Discrimination Act 1995 s 19(1)(b); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 585.

26 See the Disability Discrimination Act 1995 s 19(1)(c); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 585.

27 See the Disability Discrimination Act 1995 s 19(1)(d); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 585.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/4. ACCESS TO THE COUNTRYSIDE/(1) STATUTORY RIGHTS OF ACCESS/(i) Introduction to Statutory Access/584. Excepted land.

584. Excepted land.

The general immunity under the National Parks and Access to the Countryside Act 1949 from being treated as a trespasser or incurring penalties which is enjoyed by a person entering or being on land¹ comprised in an access agreement or order² does not apply in the case of land which is excepted land³. For this purpose, 'excepted land' means land which is for the time being of any of the following descriptions:

- 60 (1) agricultural land other than land which is agricultural land by reason only that it affords rough grazing for livestock⁴;
- 61 (2) land declared⁵ to be managed as a nature reserve⁶;
- 62 (3) land covered by buildings or the curtilage of such land⁷;
- 63 (4) land used for the purpose of a park, garden or pleasure ground which was so used when the relevant access agreement or order was made⁸;
- 64 (5) land used for getting minerals by surface working (including quarrying), or for the purposes of a railway (including a light railway) or tramway, or a golf course, racecourse or aerodrome⁹;
- 65 (6) any other land¹⁰ covered by works used for the purposes of a statutory undertaking¹¹ or an electronic communications code network¹², or the curtilage of such land¹³;
- 66 (7) land as respects which development¹⁴ is in course of being carried out which will result in it becoming excepted land under head (3), head (5) or head (6)¹⁵; and
- 67 (8) certain commons and waste lands¹⁶.

The right to enter and remain on access land¹⁷ under the Countryside and Rights of Way Act 2000 does not apply to excepted land. For this purpose, 'excepted land' means land which is for the time being of any of the following descriptions:

- 68 (a) land on which the soil is being, or has at any time within the previous 12 months been, disturbed by any ploughing or drilling¹⁸ undertaken for the purposes of planting or sowing crops or trees¹⁹;
- 69 (b) land covered by buildings²⁰ or the curtilage of such land²¹;
- 70 (c) land within 20 metres of a dwelling²²;
- 71 (d) land used as a park or garden²³;
- 72 (e) land used for the getting of minerals²⁴ by surface working (including quarrying)²⁵;
- 73 (f) land used for the purposes of a railway (including a light railway) or tramway²⁶;
- 74 (g) land used for the purposes of a golf course, racecourse or aerodrome²⁷;
- 75 (h) any other land²⁸ covered by works used for the purposes of a statutory undertaking²⁹ or an electronic communications code network, or the curtilage of any such land³⁰;
- 76 (i) land as respects which development which will result in the land becoming land falling within any of heads (b) to (h) is in the course of being carried out³¹;
- 77 (j) land within 20 metres of a building which is used for housing livestock, not being a temporary or moveable structure³²;

- 78 (k) land covered by pens in use for the temporary reception or detention of livestock³³;
- 79 (l) land habitually used for the training of racehorses³⁴;
- 80 (m) land the use of which is regulated by byelaws³⁵.

For these purposes, land is not to be treated as excepted land by reason of any development carried out on the land, if the carrying out of the development requires planning permission and that permission has not been granted³⁶.

1 As to the meaning of 'land' see PARA 636 note 1.

2 Ie the immunity enjoyed under the National Parks and Access to the Countryside Act 1949 s 60(1): see PARA 583.

3 National Parks and Access to the Countryside Act 1949 s 60(1) proviso.

4 National Parks and Access to the Countryside Act 1949 s 60(5)(a). This exception does not apply to a strip of the adjacent land on both sides of any river or canal or of any expanse of water, of reasonable width, and where a highway crosses or comes close to the river, canal or other water, so much of any land connecting the highway with the strip of land as would, if included together with the strip in an access agreement or order, afford access from the highway to some convenient launching place for small boats: Countryside Act 1968 s 16(2)(c), (5).

5 Ie by a declaration for the time being in force under the National Parks and Access to the Countryside Act 1949 s 19(2) (see PARA 664), or under s 19(2) as applied by s 21 (see PARA 665): s 60(5)(b).

6 National Parks and Access to the Countryside Act 1949 s 60(5)(b). As to nature reserves see PARA 663 et seq.

7 National Parks and Access to the Countryside Act 1949 s 60(5)(c).

8 National Parks and Access to the Countryside Act 1949 s 60(5)(d).

9 National Parks and Access to the Countryside Act 1949 s 60(5)(e).

10 Ie land not falling within heads (1)-(5) in the text: see the National Parks and Access to the Countryside Act 1949 s 60(5)(f).

11 'Statutory undertaking' has the meaning assigned to it by the Town and Country Planning Act 1990 s 262 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1099); applied by the National Parks and Access to the Countryside Act 1949 s 114(1) (which refers to the Town and Country Planning Act 1947 (repealed)); and the Planning (Consequential Provisions) Act 1990 s 2(4).

12 As to electronic communications code networks see **TELECOMMUNICATIONS** vol 97 (2010) PARA 174. As to the electronic communications code see **TELECOMMUNICATIONS** vol 97 (2010) PARA 151 et seq.

13 National Parks and Access to the Countryside Act 1949 s 60(5)(f) (amended by the Communications Act 2003 Sch 17 para 20(1), (3)).

14 'Development' has the meaning assigned to it by the Town and Country Planning Act 1990 s 55 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 218 et seq); applied by the National Parks and Access to the Countryside Act 1949 s 114(1) (which refers to the Town and Country Planning Act 1947 (repealed)); and the Planning (Consequential Provisions) Act 1990 s 2(4).

15 National Parks and Access to the Countryside Act 1949 s 60(5)(g). Land comprised in an access agreement or order does not, however, become excepted land by reason of any development carried out on it or any change of use made of it if the development or change of use is one for which, under the Town and Country Planning Act 1990, planning permission is required and either that permission has not been granted or any condition subject to which it was granted has been contravened or not complied with: National Parks and Access to the Countryside Act 1949 s 60(5) proviso.

16 National Parks and Access to the Countryside Act 1949 s 60(5)(h). The commons and waste land referred to are those in respect of which the public enjoys a right of access for purposes of air and exercise under the Law of Property Act 1925 s 193: see **COMMONS** vol 13 (2009) PARA 581.

- 17 As to the meaning of 'access land' see PARA 580.
- 18 'Ploughing' and 'drilling' include respectively agricultural or forestry operations similar to ploughing and agricultural or forestry operations similar to drilling: Countryside and Rights of Way Act 2000 Sch 1 para 14.
- 19 Countryside and Rights of Way Act 2000 Sch 1 para 1.
- 20 'Building' includes any structure or erection and any part of a building as so defined, but does not include any fence or wall, or anything which is a means of access as defined by the Countryside and Rights of Way Act 2000 s 34 (see PARA 604 note 3); and for this purpose 'structure' includes any tent, caravan or other temporary or moveable structure: Sch 1 para 14.
- 21 Countryside and Rights of Way Act 2000 Sch 1 para 2.
- 22 Countryside and Rights of Way Act 2000 Sch 1 para 3.
- 23 Countryside and Rights of Way Act 2000 Sch 1 para 4.
- 24 'Minerals' has the same meaning as in the Town and Country Planning Act 1990 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 16): Countryside and Rights of Way Act 2000 Sch 1 para 14.
- 25 Countryside and Rights of Way Act 2000 Sch 1 para 5.
- 26 Countryside and Rights of Way Act 2000 Sch 1 para 6.
- 27 Countryside and Rights of Way Act 2000 Sch 1 para 7.
- 28 The land not falling within heads (a)-(g) in the text: see the Countryside and Rights of Way Act 2000 Sch 1 para 8.
- 29 'Statutory undertaking' means: (1) the undertaking of a statutory undertaker (which, in the case of a universal service provider (within the meaning of the Postal Services Act 2000: see s 4(3), (4); and **POST OFFICE**), means his undertaking so far as relating to the provision of a universal postal service (within the meaning of the Postal Services Act 2000: see s 4; and **POST OFFICE**) and, in the case of a person who holds a licence under the Transport Act 2000 Pt I Ch I (ss 1-40) (see **AIR LAW** vol 2 (2008) PARA 139), means that person's undertaking as licence holder); or (2) an airport to which the Airports Act 1986 Pt V (ss 57-62) applies: Countryside and Rights of Way Act 2000 Sch 1 para 14 (definition amended by SI 2001/1149; SI 2001/4050). 'Statutory undertaker' means: (a) a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power; (b) any public gas transporter, within the meaning of the Gas Act 1986 Pt I (ss 4AA-48) (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 805); (c) any water or sewerage undertaker; (d) any holder of a licence under the Electricity Act 1989 s 6(1) (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1065); (e) the Environment Agency (see PARA 528; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq); (f) a universal service provider (within the meaning of the Postal Services Act 2000: see s 4(3), (4); and **POST OFFICE**) in connection with the provision of a universal postal service (within the meaning of the Postal Services Act 2000: see s 4; and **POST OFFICE**); (g) the Civil Aviation Authority; or (h) a person who holds a licence under the Transport Act 2000 Pt I Ch 1 (to the extent that the person is carrying out activities authorised by the licence): Countryside and Rights of Way Act 2000 Sch 1 para 14 (definition amended by SI 2001/1149; SI 2001/4050).
- 30 Countryside and Rights of Way Act 2000 Sch 1 para 8.
- 31 Countryside and Rights of Way Act 2000 Sch 1 para 9.
- 32 Countryside and Rights of Way Act 2000 Sch 1 para 10. The land which is excepted land by virtue of Sch 1 para 10 does not include any means of access, as defined by s 34 (see PARA 604), or any way leading to such a means of access, if the means of access is necessary for giving the public reasonable access to access land: Sch 1 para 16.
- 33 Countryside and Rights of Way Act 2000 Sch 1 para 11. Land which is habitually used for the training of racehorses is not to be treated by virtue of Sch 1 para 11 as excepted land except between dawn and midday on any day, and at any other time when it is in use for that purpose: Sch 1 para 17.
- 34 Countryside and Rights of Way Act 2000 Sch 1 para 12.

35 Countryside and Rights of Way Act 2000 Sch 1 para 13. The byelaws referred to in the text are those under the Military Lands Act 1892 s 14 or the Military Lands Act 1900 s 2: see **ARMED FORCES** vol 2(2) (Reissue) PARA 124.

36 Countryside and Rights of Way Act 2000 Sch 1 para 15(1). The text refers to planning permission under the Town and Country Planning Act 1990 Pt III (ss 55-106B): see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 217 et seq, 419 et seq. The Countryside and Rights of Way Act 2000 Sch 1 para 15(1) does not, however, apply where the development is treated by the Town and Country Planning Act 1990 s 191(2) (**TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 586) as being lawful for the purposes of the Town and Country Planning Act 1990: Countryside and Rights of Way Act 2000 Sch 1 para 15(2).

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585. Liability to the public.

The statutory rights of the public¹ in relation to land² comprised in an access agreement or order do not operate to increase the liability of a person interested in that land or adjoining land in respect of the state of the land or anything done or omitted on it³.

Provisions of the Unfair Contract Terms Act 1977⁴ relating to liability in contract and tort may apply to an agreement with a landowner or to a notice erected by a landowner, although they generally apply only to business liability⁵. Liability of an occupier of premises for breach of an obligation or duty towards a person obtaining access to the premises for recreational or educational purposes, being liability for loss or damage suffered by reason of the dangerous state of the premises, is not a business liability of the occupier for the purposes of liability in contract or tort arising from the occupation of premises used for business purposes of the occupier unless granting that person such access for the purposes concerned falls within the business purposes of the occupier⁶.

Generally, an occupier of premises owes a duty of care to his visitors in respect of dangers due to the state of the premises or to things done or omitted to be done on them⁷. However, a person entering any premises in exercise of rights of access⁸ is not, for the purposes of the Occupiers' Liability Act 1957, a visitor of the occupier of the premises⁹. In determining whether any, and if so what, duty is owed¹⁰ by an occupier of land at any time when the statutory right of access¹¹ is exercisable in relation to the land, regard is to be had, in particular, to: (1) the fact that the existence of that right ought not to place an undue burden (whether financial or otherwise) on the occupier; (2) the importance of maintaining the character of the countryside, including features of historic, traditional or archaeological interest; and (3) any relevant guidance¹². At any time when the statutory right of access is exercisable in relation to access land¹³, an occupier of the land owes no duty to any person in respect of: (a) a risk resulting from any natural feature of the landscape (which includes any plant, shrub or tree of whatever origin) or from any river, stream, ditch or pond whether or not a natural feature; or (b) a risk of that person suffering injury when passing over, under or through any wall, fence or gate, except by proper use of the gate or of a stile¹⁴. However, this does not prevent an occupier from owing a duty in respect of any risk where the danger concerned is due to anything done by the occupier with the intention of creating that risk, or being reckless as to whether that risk is created¹⁵.

¹ I.e. the rights of the public under the National Parks and Access to the Countryside Act 1949 s 60(1): see PARA 583.

² As to the meaning of 'land' see PARA 636 note 1.

³ National Parks and Access to the Countryside Act 1949 s 66(2); Countryside and Rights of Way Act 2000 s 12(1).

⁴ I.e. the Unfair Contract Terms Act 1977 ss 2-7: see **CONTRACT** vol 9(1) (Reissue) PARA 822 et seq.

⁵ See the Unfair Contract Terms Act 1977 s 1(3); and **CONTRACT** vol 9(1) (Reissue) PARA 822.

⁶ Unfair Contract Terms Act 1977 s 1(3) (amended by the Occupiers' Liability Act 1984 s 2).

⁷ See the Occupiers' Liability Act 1957 s 1; and **NEGLIGENCE** vol 78 (2010) PARA 29 et seq.

8 le any rights conferred by virtue of the Countryside and Rights of Way Act 2000 s 2(1) (see PARA 583), or by virtue of an access agreement or order under the National Parks and Access to the Countryside Act 1949 (see PARA 615 et seq). As to the meanings of 'access agreement' and 'access order' see PARA 581.

9 See the Occupiers' Liability Act 1957 s 1(4); and **NEGLIGENCE** vol 78 (2010) PARA 31.

10 le by virtue of the Occupiers' Liability Act 1984 s 1: see **NEGLIGENCE** vol 78 (2010) PARA 40.

11 le the right conferred by the Countryside and Rights of Way Act 2000 s 2(1): see PARA 583.

12 See the Occupiers' Liability Act 1984 s 1A; and **NEGLIGENCE** vol 78 (2010) PARA 40. The text refers to guidance given under the Countryside and Rights of Way Act 2000 s 20: see PARA 593.

13 As to the meaning of 'access land' see PARA 580.

14 See the Occupiers' Liability Act 1984 s 1(6A), (6B); and **NEGLIGENCE** vol 78 (2010) PARA 40. Where the land is coastal margin for the purposes of the Countryside and Rights of Way Act 2000 Pt 1 (ss 1-46) (including any land treated as coastal margin by virtue of s 16 (dedicated land: see PARA 580 note 8)), the Occupiers' Liability Act 1984 s 1(6A) has effect as if the risks referred to were risks resulting from the existence of any physical feature (whether of the landscape or otherwise): s 1(6AA) (added by the Marine and Coastal Access Act 2009 s 301).

15 See the Occupiers' Liability Act 1984 s 1(6C); and **NEGLIGENCE** vol 78 (2010) PARA 40.

UPDATE

585 Liability to the public

NOTE 14--Reference to Marine and Coastal Access Act 2009 s 301 should be to s 306.

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586. Modification of restrictions.

If land¹ comprised in an access agreement or order is subject to any covenant or other restriction which would be infringed by allowing the public to have access to the land, the covenant or other restriction is qualified², and the liability under it of any person having an interest³ in the land is limited accordingly⁴.

1 As to the meaning of 'land' see PARA 636 note 1.

2 I.e. it has effect subject to the provisions relating to access to open country contained in the National Parks and Access to the Countryside Act 1949 Pt V (ss 59-83) (see PARA 581 et seq) (s 66(3)) and the Countryside and Rights of Way Act 2000 Pt 1 (ss 1-46) (see PARA 580 et seq) (s 12(2)).

3 As to the meaning of 'interest' see PARA 639 note 4.

4 National Parks and Access to the Countryside Act 1949 s 66(3); Countryside and Rights of Way Act 2000 s 12(3). The person having the benefit of the covenant or restriction may have a claim for compensation by virtue of the National Parks and Access to the Countryside Act 1949 s 70 proviso: see PARA 588. As to the enforcement of such covenants and restrictions see **EQUITY** vol 16(2) (Reissue) PARA 627 et seq.

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587. Use of ways.

The use by the public or by any person of any way across land¹ comprised in an access agreement or order, or the use of a way across land for the purposes of open-air recreation², is to be disregarded for the purpose of any enactment or rule of law under which the dedication of a highway³ or the grant of an easement⁴ may be presumed or established by prescription⁵.

1 As to the meaning of 'land' see PARA 636 note 1.

2 ie in the exercise of the right conferred by the Countryside and Rights of Way Act 2000 s 2(1) (see PARA 583).

3 As to the dedication of land as a highway see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 108 et seq.

4 As to the creation of easements by presumption or prescription see **EASEMENTS AND PROFITS A PRENDRE** vol 16(2) (Reissue) PARA 74 et seq.

5 National Parks and Access to the Countryside Act 1949 s 66(4); Countryside and Rights of Way Act 2000 s 12(3). See *R v Secretary of State for the Environment, ex p Billson* [1999] QB 374, [1998] 2 All ER 587, which concerns dedication under the Law of Property Act 1925 s 193 (see **COMMONS** vol 13 (2009) PARA 581). The interpretation of 'as of right' in this case was disapproved in *R (on the application of Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs, R (on the application of Drain) v Secretary of State for the Environment, Food and Rural Affairs* [2007] UKHL 28, [2008] 1 AC 221, [2007] 4 All ER 273, but in view of the express terms of the National Parks and Access to the Countryside Act 1949 s 66(4) that would not apply here.

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588. Entitlement to compensation.

Where the value of the interest¹ of any person in land² is depreciated in consequence of the coming into operation of an access order³, the local planning authority⁴ must pay compensation to that person equal in amount to the depreciation⁵. However, compensation is not payable for depreciation of an interest in land being land which is not comprised in the access order, or if so comprised is excepted land⁶, unless that land is held with land comprised in the order which is not excepted land⁷, or unless the omission of any other person to exclude the public from the land comprised in the order or any part of it would have been actionable⁸ at the suit of the person seeking compensation if the access order had not come into operation⁹.

For the purpose of enabling compensation to be assessed in the light of experience gained of the actual effect on land of the coming into operation of access orders, any such compensation is not payable, except in special circumstances, until the expiration of five years from the coming into operation of the relevant order¹⁰. This restriction does not, however, require the compensation to be assessed as at a date later than the date of the coming into operation of the relevant order; but in calculating the compensation it must be assumed that, on a sale at that date of the interest in respect of which the compensation is claimed, the purchaser would have had certain knowledge concerning the order¹¹. If during the five-year period the relevant access order is revoked or so varied as to exclude from its operation any land not being excepted land, the compensation in respect of the land which thereby ceases to be comprised in an order is payable at the time the order is so revoked or varied¹².

The Secretary of State¹³ has the power to make regulations in relation to a claim for compensation¹⁴. A claim for compensation must be in writing and must be served on the local planning authority for the area in which the land comprised in the relevant order is situated¹⁵. Service must be effected within six months of the coming into operation of the order or such extended period as may be allowed in a particular case¹⁶. The claim must include particulars of the interest of the claimant in the land in respect of which it is made being sufficient to identify approximately the boundaries, and of the nature of the claimant's title to his interest in the land¹⁷, but it need not state the amount of compensation claimed¹⁸. The local planning authority must keep a register of claims made¹⁹, and must notify a claimant as soon as possible that his claim has been recorded²⁰. Within six months, or such extended period as may be allowed in any particular case, from the date when the compensation becomes payable, a person whose claim has been recorded may apply in writing to the local planning authority for payment, stating the amount of compensation claimed and giving particulars of his title to receive payment²¹.

1 As to the meaning of 'interest' see PARA 639 note 4.

2 As to the meaning of 'land' see PARA 636 note 1.

3 As to the meaning of 'access order' see PARA 581.

4 The functions of the local planning authority under the National Parks and Access to the Countryside Act 1949 s 70 are exercisable by the authority by which the access agreement or order was made or, where such an order was made by a Minister of the Crown, by the county planning authority: Local Government Act 1972 Sch 17 para 37. As to the meanings of 'local planning authority' and 'county planning authority' see PARA 636 note 12. However, where a national park authority is the local planning authority for a national park, the Local Government Act 1972 Sch 17 para 37 does not apply in relation to any functions conferred by or under the National Parks and Access to the Countryside Act 1949 (see the Environment Act 1995 s 68(1)); and those

functions are the functions of the national park authority (see s 68(2); and PARA 644). As to national park authorities see PARA 526 et seq.

5 National Parks and Access to the Countryside Act 1949 s 70.

6 As to the meaning of 'excepted land' see PARA 584.

7 National Parks and Access to the Countryside Act 1949 s 70 proviso (a).

8 The liability of any person interested in land comprised in an access order in respect of a restriction arising under a covenant or otherwise as to the use of any land comprised in the order is limited by the National Parks and Access to the Countryside Act 1949 s 66(3): see PARA 586.

9 National Parks and Access to the Countryside Act 1949 s 70 proviso (b).

10 National Parks and Access to the Countryside Act 1949 s 71(1). 'Relevant order' means the order giving rise to the compensation: s 71(1).

11 National Parks and Access to the Countryside Act 1949 s 71(2). The knowledge which the purchaser must be assumed to possess is: (1) of the actual effect during the five-year period, on the land in which the interest subsists and the use of that land, of the coming into operation of the relevant order (s 71(2)(a)); (2) of the fact and date of any revocation or variation during that period of the relevant order (s 71(2)(b)); and (3) of the fact and date of any changes during that period, as respects land comprised in the order, from or to excepted land (s 71(2)(c)). As to the meaning of 'excepted land' see PARA 584.

12 See the National Parks and Access to the Countryside Act 1949 s 71(3). If at different times within a five-year period two or more parcels of land become comprised in access orders and some person has an interest in each of those parcels, then, with the consent of every person having an interest in each of those parcels other than the first, the provisions of s 71(1)-(3) apply in relation to each of the last-mentioned parcels with the substitution for any reference to the five-year period from the coming into operation of the order by virtue of which that parcel became so comprised of a reference to a five-year period from the coming into operation of the order by virtue of which the first of those parcels became so comprised: s 71(4).

13 As to the Secretary of State see PARA 519.

14 See the National Parks and Access to the Countryside Act 1949 s 72(1)-(4); and the National Parks and Access to the Countryside Regulations 1950, SI 1950/1066.

15 See the National Parks and Access to the Countryside Regulations 1950, SI 1950/1066, reg 23(1).

16 See the National Parks and Access to the Countryside Regulations 1950, SI 1950/1066, reg 23(2).

17 See the National Parks and Access to the Countryside Regulations 1950, SI 1950/1066, reg 23(3).

18 National Parks and Access to the Countryside Act 1949 s 72(2) proviso.

19 See the National Parks and Access to the Countryside Regulations 1950, SI 1950/1066, reg 23(4). The register must be available for inspection by the public at all reasonable hours: reg 23(4)(b).

20 See the National Parks and Access to the Countryside Regulations 1950, SI 1950/1066, reg 23(4).

21 See the National Parks and Access to the Countryside Regulations 1950, SI 1950/1066, reg 24(1)-(3).

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589. Making of payments.

Payment becomes due when the amount of compensation¹ has been agreed or has been determined, and bears interest² from the date on which the relevant order³ came into operation to the date upon which payment is made⁴.

However, at any time after giving notice of a claim a claimant may apply to the local planning authority⁵ for a payment on account on the ground of special circumstances, and, if satisfied that special circumstances exist, the authority may make a payment on account of such amount as it may determine⁶. Any person aggrieved⁷ by the authority's refusal to make a payment on account or by the amount of such a payment may appeal to the Secretary of State or the Welsh Ministers⁸, who must allow the complainant and the authority an opportunity of being heard by a person appointed for the purpose, and may then either confirm the authority's decision or direct it to make a payment on account of an amount which seems just⁹.

1 As to compensation see PARA 588.

2 The rate of interest is the rate prescribed from time to time by the Treasury under the Land Compensation Act 1961 s 32 in respect of compensation for land compulsorily purchased on which entry has been made before the payment of compensation: see the National Parks and Access to the Countryside Regulations 1950, SI 1950/1066, reg 24(4); the Land Compensation Act 1961 s 40(1); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 641. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

3 As to the meaning of 'relevant order' see PARA 588 note 10.

4 See the National Parks and Access to the Countryside Act 1949 s 72(5). The same provisions as apply with reference to any dispute as to the compensation payable by Natural England or the Countryside Council for Wales in consequence of the making of byelaws apply to claims for compensation in respect of access orders: see s 107; and PARA 672. As to Natural England see PARA 523; and as to the Countryside Council for Wales see PARA 524.

5 As to the local planning authority see PARA 636 note 12.

6 See the National Parks and Access to the Countryside Act 1949 s 73(1) (amended by the Countryside Act 1968 ss 23(1), 50(2), Sch 5).

7 As to persons aggrieved see **JUDICIAL REVIEW** vol 61 (2010) PARA 656.

8 See the National Parks and Access to the Countryside Act 1949 s 73(2). The National Parks and Access to the Countryside Act 1949 refers to the Minister for Town and Country Planning, whose functions have been transferred to the Secretary of State or the Welsh Ministers: see PARA 519.

9 National Parks and Access to the Countryside Act 1949 s 73(2).

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(ii) Access on Access Land

A. REGULATION OF ACCESS

590. 'Access authority'.

In relation to land in a national park¹, for the purposes of the Countryside and Rights of Way Act 2000, the national park authority² is the 'access authority', and in the case of any other land, the local highway authority³ in whose area the land is situated is the access authority⁴.

1 As to national parks see PARA 636 et seq.

2 As to national park authorities see PARA 526 et seq.

3 'Local highway authority' has the same meaning as in the Highways Act 1980 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 56): Countryside and Rights of Way Act 2000 ss 45(1).

4 Countryside and Rights of Way Act 2000 s 1(2).

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591. Byelaws.

An access authority¹ may, as respects access land² in its area, make byelaws³:

- 81 (1) for the preservation of order⁴;
- 82 (2) for the prevention of damage to the land or anything on or in it⁵; and
- 83 (3) for securing that persons exercising the right to enter and remain on access land for the purposes of open-air recreation⁶ so behave themselves as to avoid undue interference with the enjoyment of the land by other persons⁷.

Such byelaws may relate to all the access land in the area of the access authority or only to particular land⁸. The confirming authority in relation to such byelaws is, as respects England, the Secretary of State or, as respects Wales, the Welsh Ministers⁹.

Before making such byelaws, the access authority must consult the appropriate countryside body¹⁰ and any local access forum¹¹ established for an area to which the byelaws relate¹².

Byelaws must not interfere:

- 84 (a) with the exercise of any public right of way¹³;
- 85 (b) with any authority having under any enactment functions relating to the land to which the byelaws apply¹⁴; or
- 86 (c) with the provision of an electronic communications code network or the exercise of any right conferred by or in accordance with the electronic communications code¹⁵ on the operator of any such network¹⁶.

Byelaws relating to any land may not be made unless the land is access land or the access authority is satisfied that it is likely to become access land¹⁷, and may not be confirmed unless the land is access land¹⁸.

Any access authority having power¹⁹ to make byelaws also has power to enforce byelaws made by it; and any county council or district or parish council may enforce byelaws made²⁰ by another authority as respects land in the area of the council²¹.

1 As to the meaning of 'access authority' see PARA 590.

2 As to the meaning of 'access land' see PARA 580.

3 The Local Government Act 1972 ss 236-238 (procedure for making byelaws, imposition of fines, etc: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 556 et seq) apply to all byelaws under the Countryside and Rights of Way Act 2000 s 17 whether or not the authority making them is a local authority within the meaning of the Countryside and Rights of Way Act 2000 (see PARA 658 note 6): s 17(5). As to local government areas and authorities see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq. As to the power to make byelaws under the National Parks and Access to the Countryside Act 1949 s 90 see PARA 648. See *R v Dyfed County Council, ex p Manson* [1995] Env LR 83.

4 Countryside and Rights of Way Act 2000 s 17(1)(a).

5 Countryside and Rights of Way Act 2000 s 17(1)(b).

6 ie under the Countryside and Rights of Way Act 2000 s 2(1) (see PARA 583).

- 7 Countryside and Rights of Way Act 2000 s 17(1)(c).
- 8 Countryside and Rights of Way Act 2000 s 17(2).
- 9 Countryside and Rights of Way Act 2000 s 17(5). As to the Secretary of State and the Welsh Ministers see PARA 519.
- 10 As to the meaning of 'appropriate conservation body' see PARA 580 note 2.
- 11 As to access forums see PARA 635 et seq.
- 12 Countryside and Rights of Way Act 2000 s 17(3).
- 13 Countryside and Rights of Way Act 2000 s 17(4)(a).
- 14 Countryside and Rights of Way Act 2000 s 17(4)(b).
- 15 As to electronic communications code networks see **TELECOMMUNICATIONS** vol 97 (2010) PARA 174. As to the electronic communications code see **TELECOMMUNICATIONS** vol 97 (2010) PARA 151.
- 16 Countryside and Rights of Way Act 2000 s 17(4)(c) (substituted by the Communications Act 2003 Sch 17 para 165(1), (2)).
- 17 Countryside and Rights of Way Act 2000 s 17(7)(a).
- 18 Countryside and Rights of Way Act 2000 s 17(7)(b).
- 19 Ie under the Countryside and Rights of Way Act 2000 s 17.
- 20 Ie under the Countryside and Rights of Way Act 2000 s 17.
- 21 Countryside and Rights of Way Act 2000 s 17(8).

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592. Wardens.

An access authority¹ or a district council² may appoint such number of persons as may appear to the authority making the appointment to be necessary or expedient, to act as wardens as respects access land³ in its area⁴. As respects access land in an area for which there is a local access forum⁵, an access authority must, before it first exercises the power to appoint⁶ and thereafter from time to time, consult the local access forum about the exercise of that power⁷.

Wardens may be appointed for the following purposes:

- 87 (1) to secure compliance with byelaws⁸ and with the general restrictions⁹ and any other restrictions¹⁰;
- 88 (2) to enforce any exclusion¹¹;
- 89 (3) in relation to the right of access¹², to advise and assist the public and persons interested in access land¹³;
- 90 (4) to perform such other duties (if any) in relation to access land as the authority appointing them may determine¹⁴.

For the purpose of exercising any function under these provisions¹⁵, a warden may enter upon any access land¹⁶.

1 As to the meaning of 'access authority' see PARA 590.

2 As to local government areas and authorities see **LOCAL GOVERNMENT** vol 69 (2009) PARA 22 et seq.

3 As to the meaning of 'access land' see PARA 580.

4 Countryside and Rights of Way Act 2000 s 18(1).

5 As to access forums see PARA 635 et seq.

6 Ie under the Countryside and Rights of Way Act 2000 s 18(1).

7 Countryside and Rights of Way Act 2000 s 18(2).

8 Ie byelaws under the Countryside and Rights of Way Act 2000 s 17 (see PARA 591).

9 Ie the general restrictions under the Countryside and Rights of Way Act 2000 Sch 2 (see PARA 583).

10 Countryside and Rights of Way Act 2000 s 18(3)(a). The other restrictions referred to in the text are those under Pt I Ch II (ss 21-33) (see PARA 594 et seq).

11 Countryside and Rights of Way Act 2000 s 18(3)(b). The exclusions referred to in the text are those under Pt I Ch II (see PARA 594 et seq).

12 Ie the right conferred under the Countryside and Rights of Way Act 2000 s 2(1) (see PARA 583).

13 Countryside and Rights of Way Act 2000 s 18(3)(c).

14 Countryside and Rights of Way Act 2000 s 18(3)(d).

15 Ie conferred under the Countryside and Rights of Way Act 2000 s 18.

16 Countryside and Rights of Way Act 2000 s 18(4). A warden must, if so required, produce evidence of his authority before entering any access land in the exercise of this power, and must also produce evidence of his authority while he remains on the access land, if so required by any person: s 18(5). Except as provided by s 18(4), s 18 does not authorise a warden appointed under s 18(1), on land in which any person other than the authority who appointed him has an interest, to do anything which apart from s 18 would be actionable at that person's suit by virtue of that interest: s 18(6).

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593. Codes of conduct.

It is the duty of Natural England, in relation to England¹, to issue, and from time to time revise, a code of conduct² for the guidance of persons exercising the right of access³ and of persons interested in access land⁴, and to take such other steps as appear to them expedient for securing:

- 91 (1) that the public are informed of the situation and extent of, and means of access to, access land⁵;
- 92 (2) that the public and persons interested in access land are informed of their respective rights and obligations⁶; and
- 93 (3) that, in relation to access land which is coastal margin, the public are informed that the right of access⁷ does not affect any other right of access that may exist in relation to that land⁸.

In relation to Wales, it is the duty of the Countryside Council for Wales⁹ to issue, and from time to time revise, a code of conduct, and to take such other steps as appear to it expedient for securing the results mentioned in heads (1) and (2)¹⁰.

These powers include power to contribute towards expenses incurred by other persons¹¹.

1 As to Natural England see PARA 523.

2 Such a code of conduct may include provisions in pursuance of the Countryside and Rights of Way Act 2000 s 20(1), (2) and in pursuance of the National Parks and Access to the Countryside Act 1949 s 86(1) (see PARA 660): Countryside and Rights of Way Act 2000 s 20(3).

3 ie the right conferred under the Countryside and Rights of Way Act 2000 s 2(1) (see PARA 583).

4 The duty imposed by the Countryside and Rights of Way Act 2000 s 20(1) to issue and revise a code of conduct may be discharged, in relation to access land which is coastal margin, by (or in part by) issuing and revising a separate code relating to such access land only: s 20(1A) (added by the Marine and Coastal Access Act 2009 s 303). As to the meaning of 'access land' see PARA 580; and as to the meaning of 'coastal margin' see PARA 580 note 7.

5 Countryside and Rights of Way Act 2000 s 20(1)(a).

6 Countryside and Rights of Way Act 2000 s 20(1)(b). The text refers to rights and obligations under Pt I (ss 1-46) (s 20(1)(b)(i)) and with regard to public rights of way on, and nature conservation in relation to, access land (s 20(1)(b)(ii)).

7 ie the right conferred under the Countryside and Rights of Way Act 2000 s 2(1) (see PARA 583).

8 Countryside and Rights of Way Act 2000 s 20(1)(c) (added by the Marine and Coastal Access Act 2009 s 303).

9 As to the Countryside Council for Wales see PARA 524.

10 Countryside and Rights of Way Act 2000 s 20(2).

11 Countryside and Rights of Way Act 2000 s 20(4).

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B. RESTRICTIONS ON ACCESS

(A) EXCLUSIONS AND RESTRICTIONS FOR DEFENCE AND NATIONAL SECURITY PURPOSES

594. Defence or national security.

The Secretary of State¹ may by direction exclude or restrict access by the public² to any land during any period if he is satisfied that the exclusion or restriction of such access to the extent provided by the direction is necessary for the purposes of defence or national security³.

Such a direction may be expressed to have effect:

- 94 (1) during a period specified in the direction⁴;
- 95 (2) during a specified period in every calendar year⁵;
- 96 (3) during a period which is to be determined in accordance with the direction by a person authorised by the Secretary of State⁶, and notified by that person to the relevant authority in accordance with regulations⁷; or
- 97 (4) indefinitely⁸.

Where such a direction given in relation to any land excludes or restricts access to the land indefinitely, for part of every year or of each of six or more consecutive calendar years, or for a specified period of more than five years, the Secretary of State must review the direction not later than the fifth anniversary of the relevant date⁹.

Any such directions given by the Secretary of State may be revoked or varied by a subsequent direction¹⁰.

Regulations may make provision as to the steps to be taken for informing the public about the exclusion or restriction of access, including the display of notices on or near the land to which the exclusion or restriction relates¹¹.

1 As to the Secretary of State see PARA 519.

2 Ie under the Countryside and Rights of Way Act 2000 s 2(1) (see PARA 583).

3 Countryside and Rights of Way Act 2000 s 28(1). Regulations may make provision as to notification of decisions: s 32(1)(i). In relation to England, where the Secretary of State has given such a direction he must notify the relevant authority, the access authority for the area in which the land to which the direction relates is situated, and the owner of the land, if it is reasonably practicable to do so: Access to the Countryside (Exclusion and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 12. As to the meaning of 'relevant authority' see PARA 583 note 12. As to the meaning of 'access authority' see PARA 590. As to such directions, in relation to Wales, see the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, regs 6, 8, 10-13 (as applied by reg 15).

4 Countryside and Rights of Way Act 2000 s 28(2)(a).

5 Countryside and Rights of Way Act 2000 s 28(2)(b).

6 Countryside and Rights of Way Act 2000 s 28(2)(c)(i).

7 Countryside and Rights of Way Act 2000 s 28(2)(c)(ii). Regulations may make provision as to the giving of notice for these purposes: s 32(1)(d). As to the provision made, in relation to England, see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 7; and, in relation to Wales, see the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, regs 6, 8, 10-13 (as applied by reg 15).

8 Countryside and Rights of Way Act 2000 s 28(2)(d).

9 Countryside and Rights of Way Act 2000 s 28(4). 'Relevant date', in relation to a direction, means the day on which the direction was given, or where it has previously been reviewed, the day on which it was last reviewed: s 28(5).

Regulations may make provision as to the carrying out of reviews by the Secretary of State under s 28(4): s 32(1)(k). The regulations may provide for any of the provisions of Pt I Ch II (ss 21-33) relating to appeals to apply (with or without modifications) on a review under s 27: s 32(2). As to appeals see PARA 603. In relation to England, where a review is being made, having regard to the interest of the public in having access to land, consideration must be given as to whether the exclusion or restriction is still necessary for the purpose for which the direction was given and, if so, whether the extent of the exclusion or the nature of the restriction remains appropriate for the purpose for which the direction was given: see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 14. Regulations may make provision as to requirements to be met in relation to consultation on a review: Countryside and Rights of Way Act 2000 s 32(1)(g). As to the regulations made, in relation to England, see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 16, Schedule.

10 Countryside and Rights of Way Act 2000 s 28(3).

11 Countryside and Rights of Way Act 2000 s 32(1)(j). As to the regulations that have been made, in relation to England, see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 17.

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(B) EXCLUSION ON GROUNDS OF SAFETY

595. Avoidance of risk of fire.

The relevant authority¹ may by direction exclude or restrict public access to land² in relation to any land during a specified period³ if the authority is satisfied that:

- 98 (1) by reason of any exceptional conditions of weather or any exceptional change in the condition of the land, the exclusion or restriction of access to the land to the extent provided by the direction is necessary for the purpose of fire prevention⁴; or
- 99 (2) by reason of anything done, or proposed to be done, on the land or on adjacent land, the exclusion or restriction of access to the land to the extent provided by the direction is necessary for the purpose of avoiding danger to the public⁵.

The relevant authority may exercise these powers on the application of any person interested in the land⁶, or without any such application having been made⁷.

In determining on an application made by a person interested in the land whether the condition in head (1) or (2) is satisfied, the relevant authority must have regard to:

- 100 (a) the existence of the right conferred⁸;
- 101 (b) the extent to which the applicant has exercised or proposes to exercise that right⁹; and
- 102 (c) the purposes for which he has exercised or proposes to exercise it¹⁰.

Where an application relates to land which is not access land¹¹ at the time when the application is made, the relevant authority must not give a direction unless it is satisfied that it is likely that the land will be access land during all or part of the period to which the application relates¹².

Before revoking or varying a direction which was given on the application of a person interested in the land to which the direction relates (the 'original applicant'), the relevant authority must consult the original applicant, where he still holds the interest in the land which he held when he applied for the direction and it is still reasonably practicable to consult him; and, where he does not hold that interest, it must consult any person who does and with whom consultation is reasonably practicable¹³.

Regulations may make provision as to the steps to be taken for informing the public about the exclusion or restriction of access, including the display of notices on or near the land to which the exclusion or restriction relates¹⁴.

1 As to the meaning of 'relevant authority' see PARA 583 note 12.

2 ie access by virtue of the Countryside and Rights of Way Act 2000 s 2(1) (see PARA 583).

3 'Specified period' includes a reference to: (1) a specified period in every calendar year (Countryside and Rights of Way Act 2000 s 25(2)(a)); and (2) a period which is to be: (a) determined by a specified person in accordance with the direction (s 25(2)(b)(i)); and (b) notified by him to the relevant authority in accordance with regulations under s 32(1)(d) (s 25(2)(b)(ii)). Regulations may make provision as to the giving of notice for these purposes: s 32(1)(d). As to the provision made, in relation to England, see the Access to the Countryside (Exclusion and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 7, and, in relation to Wales, see the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, regs 10, 19, 20.

4 Countryside and Rights of Way Act 2000 s 25(1)(a).

5 Countryside and Rights of Way Act 2000 s 25(1)(b). See note 4.

6 As to the meaning of 'person interested in any land' see PARA 580 note 8. Regulations may make provision restricting the cases in which a person who is interested in any land only as the holder of rights of common may make an application under the Countryside and Rights of Way Act 2000 s 25: s 32(1)(f). In relation to England, a person who is interested in any land only as the holder of rights of common may not apply for a direction under s 25 excluding access to that land unless the restriction is necessary for the purposes of any use of the land in exercise of his rights of common and the restriction would only restrict access to the land for the whole or part of the period in which he is entitled to exercise such rights: see the Access to the Countryside (Exclusion and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 8.

Regulations may make provision as to the procedure on any application to the relevant authority under the Countryside and Rights of Way Act 2000 s 25, including the period within which any such application must be made (s 32(1)(c)); and may also make provision prescribing the form of the application (s 32(1)(e)). As to the procedure see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 6; and the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, reg 5, 6, 8, 9, Sch 1. Regulations may also make provision as to notification of decisions: Countryside and Rights of Way Act 2000 s 32(1)(i). In relation to England, the relevant authority must as soon as practicable notify the applicant of the decision it has taken and supply a copy of the direction to the applicant and access authority for the area in which the land to which the direction relates is situated: see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 11(a). As to the meaning of 'access authority' see PARA 590. In relation to Wales, notification of the decision must be given as soon as possible: see the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, reg 12.

As to the form of a direction under the Countryside and Rights of Way Act 2000 s 25(1), in relation to Wales, see the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, reg 10.

As to the notification of an exclusion or restriction, in relation to Wales, under the Countryside and Rights of Way Act 2000 s 25(1), see the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, reg 13.

As to informing the public of an exclusion or restriction see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 17; and the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, reg 14.

7 Countryside and Rights of Way Act 2000 s 25(3). In relation to England, the relevant authority must determine the application within six weeks of receiving it or within any such longer period, as may have been determined by the Secretary of State, notice of which has been given to the authority by the Secretary of State and details of which have been published: Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 10. Where the relevant authority has given a direction under s 25 other than on an application by a person interested in the land to which the direction relates, it must notify the owner of the land, if it is reasonably practicable to do so, and the access authority for the area in which the land to which the direction relates is situated: reg 11(b). In relation to Wales, where the exclusion or restriction will operate during a period of six months or less then the relevant authority must decide whether to give a direction within six weeks (or such longer period as the applicant or, as the case may be, the relevant advisory body agrees) of receiving the application: see the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, reg 9(3). Where the exclusion or restriction will operate during a period of more than six months, or where the exclusion or restriction will operate for corresponding periods, of whatever length, in two or more different calendar years, the relevant authority must decide whether to give a direction within 16 weeks of receiving the application or advice: see reg 9(4).

8 Countryside and Rights of Way Act 2000 s 25(4)(a). The text refers to the right conferred under s 22 (see PARA 597): s 25(4)(a).

9 Countryside and Rights of Way Act 2000 s 25(4)(b).

10 Countryside and Rights of Way Act 2000 s 25(4)(c).

11 As to the meaning of 'access land' see PARA 580.

12 Countryside and Rights of Way Act 2000 s 25(5).

13 Countryside and Rights of Way Act 2000 s 27(5). Regulations may make provision as to requirements to be met in relation to consultation: s 32(1)(g). As to the regulations that have been made, in relation to England, see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 13; and, in relation to Wales, see the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, reg 7.

14 Countryside and Rights of Way Act 2000 s 32(1)(j). As to the regulations that have been made, in relation to England, see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 17; and, in relation to Wales, see the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, reg 14.

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596. Cases of emergency.

Regulations may make provision enabling the relevant authority¹, where the authority is satisfied that an emergency has arisen which makes the exclusion or restriction of access by the public² necessary³, to exclude or restrict by direction such access in respect of any land for a period not exceeding three months⁴.

1 As to the meaning of 'relevant authority' see PARA 583 note 12.

2 ie access by virtue of the Countryside and Rights of Way Act 2000 s 2(1) (see PARA 583).

3 ie for any of the purposes specified in the Countryside and Rights of Way Act 2000 s 24(1) (see PARA 599), s 25(1) (see PARA 595) or s 26(3) (see PARA 600).

4 Countryside and Rights of Way Act 2000 s 31(1). The regulations may provide for any of the provisions of Pt 1 Ch II (ss 21-33) to apply in relation to a direction given under the regulations with such modifications as may be prescribed: s 31(2). At the date at which this volume states the law, no such regulations had been made.

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(C) EXCLUSION AND RESTRICTIONS AT LANDOWNER'S DISCRETION

597. Discretion of owners and others.

An entitled person¹ may, by giving notice to the relevant authority² in accordance with regulations³, exclude or restrict public access⁴ to any land on one or more days specified in the notice⁵. The number of days on which any entitled person excludes or restricts public access to any land must not in any calendar year exceed the relevant maximum⁶. Further, an entitled person may not exclude or restrict access to any land on Christmas Day or Good Friday, or any day which is a bank holiday⁷. An entitled person may not exclude or restrict access to any land:

- 103 (1) on more than four days in any calendar year which are either Saturday or Sunday⁸;
- 104 (2) on any Saturday in the period beginning with 1 June and ending with 11 August in any year⁹;
- 105 (3) on any Sunday in the period beginning with 1 June and ending with 30 September in any year¹⁰.

Regulations may provide that any exclusion or restriction¹¹ of public access to any land must relate to an area of land the boundaries of which are determined in accordance with the regulations¹².

It is an offence for a person to place a notice containing false or misleading information likely to deter the public from exercising the right of public access¹³.

1 For these purposes, 'entitled person', in relation to any land, means: (1) the owner of the land (Countryside and Rights of Way Act 2000 s 22(3)(a)); and (2) any other person having an interest in the land and falling within a prescribed description (s 22(3)(b)). As to the meaning of 'owner' see PARA 583 note 12. 'Prescribed' means prescribed by regulations: s 45(1). At the date at which this volume states the law, no such regulations had been made.

2 As to the meaning of 'relevant authority' see PARA 583 note 12.

3 Ie regulations under the Countryside and Rights of Way Act 2000 s 32(1)(a) (see note 5).

4 Ie under the Countryside and Rights of Way Act 2000 s 2(1) (see PARA 583).

5 Countryside and Rights of Way Act 2000 s 22(1). Regulations may make provision in relation to the giving of such notice (s 32(1)(a)); and may also make provision prescribing the form of the notice (s 32(1)(e)). As to the regulations that have been made see the Access to the Countryside (Exclusion and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 4; and the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, regs 3, 19, 20. As to informing the public of an exclusion or restriction see the Access to the Countryside (Exclusion and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 17; and the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, reg 14.

6 Countryside and Rights of Way Act 2000 s 22(2). The relevant maximum means 28: s 22(4). Where regulations are made under s 22(3)(b) (see note 1), they must provide that, in cases where there are two or more entitled persons having different interests in the land, the relevant maximum in relation to each of them is to be determined in accordance with the regulations, but so that the number of days on which access by virtue of s 2(1) to any land may be excluded or restricted under s 22 in any calendar year does not exceed 28: s 22(5).

7 Countryside and Rights of Way Act 2000 s 22(6). The text refers to a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales (see **TIME** vol 97 (2010) PARA 321): Countryside and Rights of Way Act 2000 s 22(6)(b).

8 Countryside and Rights of Way Act 2000 s 22(7)(a).

9 Countryside and Rights of Way Act 2000 s 22(7)(b).

10 Countryside and Rights of Way Act 2000 s 22(7)(c).

11 le under the Countryside and Rights of Way Act 2000 s 22(1) (see the text and notes 1-5).

12 Countryside and Rights of Way Act 2000 s 22(8).

13 See the Countryside and Rights of Way Act 2000 s 14; and PARA 614.

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598. Restriction on dogs.

The owner¹ of any land consisting of moor managed for the breeding and shooting of grouse may, so far as appears to him to be necessary in connection with the management of the land for that purpose, by taking such steps as may be prescribed, provide that, during a specified period², the right of public access to the land³ is exercisable only by persons who do not take dogs on the land⁴.

The owner of any land may, so far as appears to him to be necessary in connection with lambing, by taking such steps as may be prescribed, provide that during a specified period⁵ the right of public access is exercisable only by persons who do not take dogs into any field or enclosure⁶ on the land in which there are sheep⁷.

Such restrictions⁸ do not prevent a blind person from taking with him a trained guide dog, or a deaf person from taking with him a trained hearing dog⁹.

1 As to the meaning of 'owner' see PARA 583 note 12.

2 As respects any land any such period specified may not be more than five years: Countryside and Rights of Way Act 2000 s 23(4)(a).

3 I.e. the right under the Countryside and Rights of Way Act 2000 s 2(1) (see PARA 583).

4 Countryside and Rights of Way Act 2000 s 23(1). Regulations may make provision as to the steps to be taken under s 23(1), (2): s 32(1)(b). As to the regulations that have been made see the Access to the Countryside (Exclusion and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 5; and the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, regs 4, 19.

5 As respects any land, not more than one period may be specified in any calendar year, and that period may not be more than six weeks: Countryside and Rights of Way Act 2000 s 23(4)(b).

6 'Field or enclosure' means a field or enclosure of not more than 15 hectares: Countryside and Rights of Way Act 2000 s 23(3).

7 Countryside and Rights of Way Act 2000 s 23(2). See note 4.

8 I.e. a restriction imposed under the Countryside and Rights of Way Act 2000 s 23(1), (2).

9 Countryside and Rights of Way Act 2000 s 23(5).

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(D) EXCLUSIONS AND RESTRICTIONS FOR LAND MANAGEMENT AND CONSERVATION PURPOSES

599. Land management.

The relevant authority¹ may by direction, on an application made by a person interested in any land², exclude or restrict public access to that land³ during a specified period⁴, if the authority is satisfied that the exclusion or restriction⁵ of public access to the extent provided by the direction is necessary for the purposes of the management of the land by the applicant⁶.

In determining whether to any extent the exclusion or restriction of access during any period is necessary for the purposes of land management, the relevant authority must have regard to:

- 106 (1) the existence of the right to exclude or restrict access⁷;
- 107 (2) the extent to which the applicant has exercised or proposes to exercise that right⁸; and
- 108 (3) the purposes for which he has exercised or proposes to exercise it⁹.

Where an application relates to land which is not access land¹⁰ at the time when the application is made, the relevant authority must not give a direction¹¹ unless it is satisfied that it is likely that the land will be access land during all or part of the period to which the application relates¹².

Before revoking or varying a direction which was given on the application of a person interested in the land to which the direction relates (the 'original applicant'), the relevant authority must consult the original applicant, where he still holds the interest in the land which he held when he applied for the direction and it is still reasonably practicable to consult him; and, where he does not hold that interest, it must consult any person who does and with whom consultation is reasonably practicable¹³.

Regulations may make provision as to the steps to be taken for informing the public about the exclusion or restriction of access, including the display of notices on or near the land to which the exclusion or restriction relates¹⁴.

1 As to the meaning of 'relevant authority' see PARA 583 note 12.

2 As to the meaning of 'person interested in any land' see PARA 580 note 8. Regulations may make provision restricting the cases in which a person who is interested in any land only as the holder of rights of common may make an application under the Countryside and Rights of Way Act 2000 s 24: s 32(1)(f). In relation to England, a person who is interested in any land only as the holder of rights of common may not apply for a direction under s 24 excluding access to that land unless the restriction is necessary for the purposes of any use of the land in exercise of his rights of common, and the restriction would only restrict access to the land for the whole or part of the period in which he is entitled to exercise such rights: see the Access to the Countryside (Exclusion and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 8.

3 Ie under the Countryside and Rights of Way Act 2000 s 2(1) (see PARA 583).

4 'Specified period' includes a reference to: (1) a specified period in every calendar year (Countryside and Rights of Way Act 2000 s 24(2)(a)); or (2) a period which is to be: (a) determined by the applicant in accordance with the direction (s 24(2)(b)(i)); and (b) notified by him to the relevant authority in accordance with regulations

under s 32(1)(d) (s 24(2)(b)(ii)). Regulations may make provision as to the giving of notice for these purposes: s 32(1)(d). As to the provision made, in relation to England, see the Access to the Countryside (Exclusion and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 7; and, in relation to Wales, see the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, regs 10, 19, 20.

5 le under the Countryside and Rights of Way Act 2000 s 24.

6 Countryside and Rights of Way Act 2000 s 24(1). Regulations may make provision as to the procedure on any application to the relevant authority under s 24, including the period within which any such application must be made (s 32(1)(c)); and may also make provision prescribing the form of the application (s 32(1)(e)). As to the procedure see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 6; and the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, regs 5, 6, 8, 9, Sch 1. Regulations may also make provision as to notification of decisions: Countryside and Rights of Way Act 2000 s 32(1)(i). In relation to England, the relevant authority must determine the application within six weeks of receiving it or within any such longer period, as may have been determined by the Secretary of State, notice of which has been given to the authority by the Secretary of State and details of which have been published: Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 10. The relevant authority must as soon as practicable notify the applicant of the decision it has taken and supply a copy of the direction to the applicant and to the access authority for the area in which the land to which the direction relates is situated: see reg 11(a). As to the meaning of 'access authority' see PARA 590. In relation to Wales, where the exclusion or restriction will operate during a period of six months or less then the relevant authority must decide whether to give a direction within six weeks (or such longer period as the applicant or, as the case may be, the relevant advisory body agrees) of receiving the application: see the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, reg 9(3). Where the exclusion or restriction will operate during a period of more than six months, or where the exclusion or restriction will operate for corresponding periods, of whatever length, in two or more different calendar years, the relevant authority must decide whether to give a direction within 16 weeks of receiving the application or advice: see reg 9(4).

7 Countryside and Rights of Way Act 2000 s 24(3)(a). The text refers to the right conferred by s 22 (see PARA 597): s 24(2)(a).

8 Countryside and Rights of Way Act 2000 s 24(3)(b).

9 Countryside and Rights of Way Act 2000 s 24(3)(c).

10 As to the meaning of 'access land' see PARA 580.

11 le under the Countryside and Rights of Way Act 2000 s 24.

12 Countryside and Rights of Way Act 2000 s 24(4).

13 Countryside and Rights of Way Act 2000 s 27(5). Regulations may make provision as to requirements to be met in relation to consultation: s 32(1)(g). As to the regulations made, in relation to England, see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 13; and in relation to Wales, the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, reg 7.

14 Countryside and Rights of Way Act 2000 s 32(1)(j). As to the regulations that have been made, in relation to England, see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 17; and, in relation to Wales, see the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, reg 14.

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600. Nature conservation and heritage preservation.

The relevant authority¹ may by direction exclude or restrict public access² to any land during any period if it is satisfied that the exclusion or restriction of access to the extent provided by the direction is necessary³ for:

- 109 (1) the purpose of conserving flora, fauna or geological or physiographical features of the land in question⁴;
- 110 (2) the purpose of preserving:
 - 1. (a) any scheduled monument⁵; or
 - 2. (b) any other structure, work, site, garden or area which is of historic, architectural, traditional, artistic or archaeological interest⁶.

Such a direction may be expressed to have effect:

- 111 (i) during a period specified in the direction⁷;
- 112 (ii) during a specified period in every calendar year⁸;
- 113 (iii) during a period which is to be determined by a specified person in accordance with the direction⁹, and notified by him to the relevant authority in accordance with regulations¹⁰; or
- 114 (iv) indefinitely¹¹.

In considering whether to give a direction, the relevant authority must have regard to any advice given to it by the relevant advisory body¹². Before revoking or varying a direction, the relevant authority must consult the relevant advisory body¹³.

Regulations may make provision as to the steps to be taken for informing the public about the exclusion or restriction of access, including the display of notices on or near the land to which the exclusion or restriction relates¹⁴.

1 As to the meaning of 'relevant authority' see PARA 583 note 12.

2 ie under the Countryside and Rights of Way Act 2000 s 2(1) (see PARA 583).

3 Countryside and Rights of Way Act 2000 s 26(1). Regulations may make provision as to notification of decisions: s 32(1)(i). In relation to England, where the relevant authority has given a direction under s 26 other than on an application by a person interested in the land to which the direction relates, it must notify the owner of the land, if it is reasonably practicable to do so, and the access authority for the area in which the land to which the direction relates is situated: Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 11(b). As to the meaning of 'access authority' see PARA 590. As to notification in relation to Wales see the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, regs 9, 19, 20.

4 Countryside and Rights of Way Act 2000 s 26(3)(a).

5 Countryside and Rights of Way Act 2000 s 26(3)(b)(i). The text refers to any scheduled monument as defined by the Ancient Monuments and Archaeological Areas Act 1979 s 1(11) (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1010): Countryside and Rights of Way Act 2000 s 26(3)(b)(i).

6 Countryside and Rights of Way Act 2000 s 26(3)(b)(ii).

7 Countryside and Rights of Way Act 2000 s 26(2)(a).

8 Countryside and Rights of Way Act 2000 s 26(2)(b).

9 Countryside and Rights of Way Act 2000 s 26(2)(c)(i).

10 Countryside and Rights of Way Act 2000 s 26(2)(c)(ii). The text refers to regulations made under s 32(1)(d): s 26(2)(c)(ii). Regulations may make provision as to the giving of notice for these purposes: s 32(1)(d). As to the provision made, in relation to England, see the Access to the Countryside (Exclusion and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 7; and, in relation to Wales, see the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, regs 10, 19, 20.

11 Countryside and Rights of Way Act 2000 s 26(2)(d).

12 Countryside and Rights of Way Act 2000 s 26(4). 'Relevant advisory body' means:

50 (1) in relation to a direction which is to be given for the purpose specified in s 26(3)(a) (see the text and notes 1-4) or which revokes a direction given for that purpose: (a) in the case of land in England in respect of which Natural England is not the relevant authority, Natural England (s 26(6)(a)(i) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 157)); and (b) in the case of land in Wales in respect of which the Countryside Council for Wales is not the relevant authority, the Countryside Council for Wales (Countryside and Rights of Way Act 2000 s 26(6)(a)(ii)); and

51 (2) in relation to a direction which is to be given for the purpose specified in s 26(3)(b) or which revokes a direction given for that purpose: (a) in the case of land in England, the Historic Buildings and Monuments Commission for England (s 26(6)(b)(i)); and (b) in the case of land in Wales, the Welsh Ministers (s 26(6)(b)(ii)).

As to Natural England see PARA 523; and as to the Countryside Council for Wales see PARA 524. As to the Historic Buildings and Monuments Commission for England see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 803 et seq. As to the Welsh Ministers see PARA 519.

In relation to England, the relevant authority must notify the relevant advisory body of any decision which it has taken to give a direction under s 26, or not to act in accordance with any advice given to it by that body in considering whether to give a direction and, where it has given such a direction, supply a copy of it to the relevant advisory body: Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 11(d).

The Countryside and Rights of Way Act 2000 s 26(4) does not apply where the direction is given by the Countryside Council for Wales for the purpose specified in s 26(3)(a) (see the text and notes 1-4) or revokes a direction given by it for that purpose: s 26(5).

Where the relevant advisory body (excluding the Welsh Ministers: s 29(5) (amended by SI 2002/794)) has given advice under the Countryside and Rights of Way Act 2000 s 26(4) or on being consulted under s 27(6) (see the text and note 13), but in any respect the relevant authority decides not to act in accordance with that advice, the relevant advisory body may refer the decision, in the case of land in England, to the Secretary of State, or in the case of land in Wales, to the Welsh Ministers: s 29(1), (2) (s 29(2) amended by SI 2002/794). On such a reference, the Secretary of State or the Welsh Ministers may, if he thinks or they think fit, cancel any direction given by the relevant authority, or require the relevant authority to give such direction under the Countryside and Rights of Way Act 2000 s 26 as the Secretary of State thinks or, as the case may be, the Welsh Ministers think, fit: s 29(3) (amended by SI 2002/794). As to the Secretary of State see PARA 519. The Countryside and Rights of Way Act 2000 ss 7, 8, Sch 3 (see PARA 610) have effect in relation to such a reference as they have effect in relation to an appeal under s 6 (see PARA 610): s 29(4) (amended by SI 2002/794).

13 Countryside and Rights of Way Act 2000 s 27(6). However, this does not apply where the direction falls within s 26(5) (see note 12): s 27(6). Regulations may make provision as to requirements to be met in relation to consultation: s 32(1)(g). As to the regulations made, in relation to England, see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 13; and, in relation to Wales, the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, reg 7.

14 Countryside and Rights of Way Act 2000 s 32(1)(j). As to the regulations that have been made, in relation to England, see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI

2003/2713, reg 17; and, in relation to Wales, see the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, reg 14.

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(E) GUIDANCE, DIRECTIONS AND APPEALS

601. Guidance.

Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales¹, may issue guidance:

- 115 (1) to national park authorities² with respect to the discharge by national park authorities of their functions³; and
- 116 (2) to the Forestry Commissioners⁴ with respect to the discharge by the Forestry Commissioners of any functions conferred on them as a relevant authority⁵.

Natural England or the Council may not issue any such guidance unless the guidance has been approved, in the case of Natural England, by the Secretary of State and, in the case of the Council, by the Welsh Ministers⁶.

Where Natural England or the Council issues guidance, it must arrange for the guidance to be published in such manner as it considers appropriate⁷.

National park authorities and the Forestry Commissioners must have regard to any guidance issued to them⁸.

1 As to Natural England see PARA 523; and as to the Countryside Council for Wales see PARA 524.

2 As to national park authorities see PARA 526 et seq.

3 Countryside and Rights of Way Act 2000 s 33(1)(a), (2)(a) (reg 33(1) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 158(a)). The text refers to functions under the Countryside and Rights of Way Act 2000 Pt I Ch II (ss 21-33).

4 As to the Forestry Commissioners see PARA 529; and **FORESTRY** vol 52 (2009) PARA 34 et seq.

5 Countryside and Rights of Way Act 2000 s 33(1)(b), (2)(b) (reg 33(1) as amended: see note 3). The text refers to functions conferred by virtue of s 21(6) (see PARA 583 note 12). As to the meaning of 'relevant authority' see PARA 583 note 12.

6 Countryside and Rights of Way Act 2000 s 33(3) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 158(a)).

7 Countryside and Rights of Way Act 2000 s 33(4) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 158(b)).

8 Countryside and Rights of Way Act 2000 s 33(5).

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602. Directions and reviews.

Regulations may make provision as to the giving of directions by relevant authorities¹ or the Secretary of State².

Before giving a direction to exclude or restrict access³ in relation to land in an area for which there is a local access forum⁴ so as to exclude or restrict access to the land indefinitely, or during a period which exceeds, or may exceed, six months, the relevant authority must consult the local access forum⁵.

Where a direction in relation to any land by the relevant authority excludes or restricts access to the land indefinitely, for part of every year or of each of six or more consecutive calendar years, or for a specified period of more than five years, the authority must review the direction not later than the fifth anniversary of the relevant date⁶.

A direction⁷ may be revoked or varied by a subsequent direction⁸.

1 As to the meaning of 'relevant authority' see PARA 583 note 12.

2 Countryside and Rights of Way Act 2000 s 32(1)(h). As to the regulations that have been made see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, Pt II (regs 4-18); and the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, Pt III (regs 5-12). In relation to Wales, a direction is given when a person authorised by the relevant authority to do so signs and dates it: reg 11.

3 Ie under the Countryside and Rights of Way Act 2000 s 24 (see PARA 599), s 25 (see PARA 595) or s 26 (see PARA 600).

4 As to local access forums see PARA 635 et seq.

5 Countryside and Rights of Way Act 2000 s 27(1). Regulations may make provision as to requirements to be met in relation to consultation: s 32(1)(g). As to the procedure for such consultation, in relation to England, see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 9; and, in relation to Wales, see the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, reg 6. As to the persons to be sent copies of notices relating to the proposed direction, in relation to England, see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, Schedule; and, in relation to Wales, see the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, reg 19, Sch 1. In relation to England, a relevant authority must notify the local access forum by supplying it with a copy of the direction regarding any decision which it has taken in respect of a proposed direction or the review of a direction following consultation with the local access forum under the Countryside and Rights of Way Act 2000 s 27(1): Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 11(e). In relation to Wales, a relevant authority must if a direction was given, or would have been given had the relevant authority not decided not to give a direction, following consultation with a relevant local access forum be sent to that local access forum: see the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, reg 12.

6 Countryside and Rights of Way Act 2000 s 27(3). 'Relevant date', in relation to a direction, means the day on which the direction was given, or where it has already been reviewed, the day on which it was last reviewed: s 27(4).

Regulations may make provision as to the carrying out of reviews by relevant authorities under s 27(3): s 32(1)(k). In relation to England, where a review is being made, having regard to the interest of the public in having access to land, consideration must be given as to whether the exclusion or restriction is still necessary for the purpose for which the direction was given and, if so, whether the extent of the exclusion or the nature of the restriction remains appropriate for the purpose for which the direction was given: see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 14. Regulations may

make provision as to requirements to be met in relation to consultation: Countryside and Rights of Way Act 2000 s 32(1)(g). As to the consultation to be carried out before reviewing a direction, in relation to England, see Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 15; and as to the persons to be sent copies of notices relating to the proposed direction see Schedule.

7 Ie under the Countryside and Rights of Way Act 2000 s 24 (see PARA 599), s 25 (see PARA 595) or s 26 (see PARA 600).

8 Countryside and Rights of Way Act 2000 s 27(2). As to the procedure in relation to such a revocation or variation of a direction under s 24 (see PARA 599) or s 25 (see PARA 595), in relation to England, see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, reg 13.

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603. Appeals.

Where a person interested in any land (the 'applicant') has applied for a direction¹, or has made representations on being consulted², but in any respect, the relevant authority³ decides not to act in accordance with the application or the representations⁴, the relevant authority must inform the applicant of its reasons for not acting in accordance with the application or representations⁵.

The applicant may appeal against the decision, in the case of land in England, to the Secretary of State or, in the case of land in Wales, to the Welsh Ministers⁶. On appeal the Secretary of State or the Welsh Ministers may, if he thinks or they think fit cancel any direction given by the relevant authority, or require the relevant authority to give such direction⁷ as the Secretary of State thinks or, as the case may be, the Welsh Ministers think, fit⁸.

1 Ie under the Countryside and Rights of Way Act 2000 s 24 (see PARA 599) or s 25 (see PARA 595).

2 Ie under the Countryside and Rights of Way Act 2000 s 27(5) (see PARAS 595, 599).

3 As to the meaning of 'relevant authority' see PARA 583 note 12.

4 Countryside and Rights of Way Act 2000 s 30(1). Regulations may make provision as to the period within which and manner in which appeals are brought under s 30 (s 32(l)), as to the advertising of such an appeal (s 32(m)), and as to the manner in which such appeals are to be considered (s 32(n)). As to such regulations see the Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003, SI 2003/2713, regs 19-70 (reg 61 amended by SI 2006/990); the Countryside Access (Appeals Procedures) (Wales) Regulations 2002, SI 2002/1794 (amended by SI 2003/142); and the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142, regs 16-17, 19.

5 Countryside and Rights of Way Act 2000 s 30(2).

6 Countryside and Rights of Way Act 2000 s 30(3) (amended by SI 2002/794). As to the Secretary of State and the Welsh Ministers see PARA 519. The Countryside and Rights of Way Act 2000 ss 7, 8, Sch 3 (see PARA 610) have effect in relation to such a reference as they have effect in relation to an appeal under s 6 (see PARA 610): s 30(5) (amended by SI 2002/794).

7 Ie under the Countryside and Rights of Way Act 2000 s 24 (see PARA 599) or s 25 (see PARA 595).

8 Countryside and Rights of Way Act 2000 s 30(4) (amended by SI 2002/794).

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C. WORKS FOR PROVIDING MEANS OF ACCESS

604. Agreements.

Where, in respect of any access land¹, it appears to the access authority² that:

- 117 (1) the opening up, improvement or repair of any means of access³ to the land⁴;
 - 118 (2) the construction of any new means of access to the land⁵;
 - 119 (3) the maintenance of any means of access to the land⁶; or
 - 120 (4) the imposition of restrictions:
- 3
- 3. (a) on the destruction, removal, alteration or stopping up of any means of access to the land⁷; or
 - 4. (b) on the doing of any thing whereby the use of any such means of access to the land by the public would be impeded⁸,
- 4

is necessary for giving the public reasonable access to that land in exercise of the right of public access⁹, the access authority may enter into an agreement with the owner¹⁰ or occupier of the land as to the carrying out of the works or the imposition of the restrictions¹¹.

Such an agreement may provide:

- 121 (i) for the carrying out of works by the owner or occupier or by the access authority¹²; and
 - 122 (ii) for the making of payments by the access authority:
- 5
- 5. (A) as a contribution towards, or for the purpose of defraying, costs incurred by the owner or occupier in carrying out any works for which the agreement provides¹³; or
 - 6. (B) in consideration of the imposition of any restriction¹⁴.
- 6

A person who is authorised by a local highway authority¹⁵ or a national park authority¹⁶ to do so may enter any land for the purpose of determining whether the local highway authority or national park authority should enter into an agreement¹⁷.

1 As to the meaning of 'access land' see PARA 580.

2 As to the meaning of 'access authority' see PARA 590.

3 'Means of access', in relation to land, means:

52 (1) any opening in a wall, fence or hedge bounding the land (or part of the land), with or without a gate, stile or other works for regulating passage through the opening (Countryside and Rights of Way Act 2000 s 34(a));

53 (2) any stairs or steps for enabling persons to enter on the land (or part of the land) (s 34(b)); or

54 (3) any bridge, stepping stone or other works for crossing a watercourse, ditch or bog on the land or adjoining the boundary of the land (s 34(c)).

4 Countryside and Rights of Way Act 2000 s 35(1)(a).

5 Countryside and Rights of Way Act 2000 s 35(1)(b).

6 Countryside and Rights of Way Act 2000 s 35(1)(c).

7 Countryside and Rights of Way Act 2000 s 35(1)(d)(i).

8 Countryside and Rights of Way Act 2000 s 35(1)(d)(ii).

9 le conferred under the Countryside and Rights of Way Act 2000 s 2(1) (see PARA 583).

10 'Owner', in relation to any land, means (subject to the definition of 'access land': see PARA 580) any person, other than a mortgagee not in possession, who, whether in his own right or as trustee for another person, is entitled to receive the rack rent of the land, or, where the land is not let at a rack rent, would be so entitled if it were so let: Countryside and Rights of Way Act 2000 s 45(1).

11 Countryside and Rights of Way Act 2000 s 35(1).

12 Countryside and Rights of Way Act 2000 s 35(2)(a).

13 Countryside and Rights of Way Act 2000 s 35(2)(b)(i).

14 Countryside and Rights of Way Act 2000 s 35(2)(b)(ii).

15 As to the meaning of 'local highway authority' see PARA 590 note 3.

16 As to national park authorities see PARA 526 et seq.

17 Countryside and Rights of Way Act 2000 s 40(2)(a), (3)(c). See also ss 40(5)-(10), 41; and PARA 583 note 11.

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605. Failure to comply with agreement.

If the owner¹ or occupier of any access land² fails to carry out within the required time³ any works which he is required by an agreement⁴ to carry out, the access authority⁵, after giving not less than 21 days' notice of its intention to do so, may take all necessary steps for carrying out those works⁶.

If the owner or occupier of any access land fails to observe any restriction which he is required by an agreement to observe, the access authority may give him a notice requiring him within a specified period of not less than 21 days to carry out such works as may be specified in the notice, for the purpose of remedying the failure to observe the restriction⁷.

If the person to whom a notice is given fails to comply with it, the access authority may take all necessary steps for carrying out any works specified in the notice⁸.

A person who is authorised by a local highway authority⁹ or a national park authority¹⁰ to do so may enter any land for the purpose of determining whether the local highway authority or national park authority should give a notice¹¹ or carry out works¹².

1 As to the meaning of 'owner' see PARA 604 note 10.

2 As to the meaning of 'access land' see PARA 580.

3 'Required time' means: (1) the time specified in, or determined in accordance with, the agreement as that within which the works must be carried out; or (2) if there is no such time, a reasonable time: Countryside and Rights of Way Act 2000 s 36(2).

4 As to such agreements see PARA 604.

5 As to the meaning of 'access authority' see PARA 590.

6 Countryside and Rights of Way Act 2000 s 36(1). Where the access authority carries out any works by virtue of s 36(1), the authority may recover the amount of any expenses reasonably incurred by it in carrying out the works, reduced by its contribution under the agreement, from the person by whom under the agreement the cost (apart from the authority's contribution) of carrying out the works would fall to be borne: s 36(6).

7 Countryside and Rights of Way Act 2000 s 36(3). Such a notice must contain particulars of the right of appeal conferred by s 38 (see PARA 607): s 36(4).

8 Countryside and Rights of Way Act 2000 s 36(5). Where the access authority carries out any works by virtue of s 36(5), the authority may recover the amount of any expenses reasonably incurred by it in carrying out the works from the person to whom the notice under s 36(3) (see the text and note 7) was given: s 36(7).

9 As to the meaning of 'local highway authority' see PARA 590 note 3.

10 As to national park authorities see PARA 526 et seq.

11 I.e. notice under the Countryside and Rights of Way Act 2000 s 36(1) (see the text and notes 1-6) or s 36(3) (see the text and note 7).

12 Countryside and Rights of Way Act 2000 s 40(2)(a), (3)(d). The text refers to works under s 36(1) (see the text and notes 1-6) or 36(5) (see the text and note 7): s 40(2)(a), (3)(d). See also ss 40(5)-(10), 41; and PARA 583 note 11.

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606. Access in absence of an agreement.

Where, in respect of any access land¹:

- 123 (1) it appears to the access authority² that:
 - 7 7. (a) the opening up, improvement or repair of any means of access to the land³;
 8. (b) the construction of any new means of access to the land⁴; or
 9. (c) the maintenance of any means of access to the land⁵,
- 8 124 is necessary for giving the public reasonable access to that land, or to other access land, in pursuance of the right of public access⁶; and
- 125 (2) the access authority is satisfied that it is unable to conclude on reasonable terms an agreement⁷ with the owner⁸ or occupier of the land for the carrying out of the works⁹,

the access authority may give the owner or occupier a notice stating that, after the end of a specified period of not less than 21 days, the authority intends to take all necessary steps for carrying out the works specified in the notice for the opening up, improvement, repair, construction or maintenance of the means of access¹⁰.

Where a notice is given to any person as the owner or occupier of any land, the access authority must give a copy of the notice to every other owner or occupier of the land¹¹.

If, at the end of the period specified in a notice, any of the works specified in the notice have not been carried out, the access authority may take all necessary steps for carrying out those works¹².

A person who is authorised by a local highway authority¹³ or a national park authority¹⁴ to do so may enter any land for the purpose of determining whether the local highway authority or national park authority should give a notice¹⁵ or carry out works¹⁶.

1 As to the meaning of 'access land' see PARA 580.

2 As to the meaning of 'access authority' see PARA 590.

3 Countryside and Rights of Way Act 2000 s 37(1)(a)(i). As to the meaning of 'means of access' see PARA 604 note 3.

4 Countryside and Rights of Way Act 2000 s 37(1)(a)(ii).

5 Countryside and Rights of Way Act 2000 s 37(1)(a)(iii).

6 Countryside and Rights of Way Act 2000 s 37(1)(a). The text refers to the right of public access under s 2(1) (see PARA 583).

7 ie an agreement under the Countryside and Rights of Way Act 2000 s 35 (see PARA 604).

8 As to the meaning of 'owner' see PARA 604 note 10.

9 Countryside and Rights of Way Act 2000 s 37(1)(b).

10 Countryside and Rights of Way Act 2000 s 37(1). Such a notice must contain particulars of the right of appeal conferred by s 38 (see PARA 607): s 37(2). An access authority exercising the power conferred by s 37(1) in relation to the provision of a means of access must have regard to the requirements of efficient management of the land in deciding where the means of access is to be provided: s 37(4).

11 Countryside and Rights of Way Act 2000 s 37(3).

12 Countryside and Rights of Way Act 2000 s 37(5).

13 As to the meaning of 'local highway authority' see PARA 590 note 3.

14 As to national park authorities see PARA 526 et seq.

15 I.e. notice under the Countryside and Rights of Way Act 2000 s 37(1) (see the text and notes 1-10).

16 Countryside and Rights of Way Act 2000 s 40(2)(a), (3)(d). The text refers to works under s 37(5) (see the text and note 12): s 40(2)(a), (3)(d). See also ss 40(5)-(10), 41; and PARA 583 note 11.

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607. Appeals relating to agreements.

Where a notice¹ has been given to a person in respect of any land, he or any other owner² or occupier of the land may appeal against the notice to the Secretary of State, in relation to England, or the Welsh Ministers, in relation to Wales³.

An appeal against a notice for failure to comply with a restriction⁴ may be brought on any of the following grounds:

- 126 (1) that the notice requires the carrying out of any works which are not necessary for remedying a breach of the agreement⁵;
- 127 (2) that any of the works have already been carried out⁶; and
- 128 (3) that the period specified in the notice as that before the end of which the works must be carried out is too short⁷.

An appeal against a notice where there is no agreement⁸ may be brought on any of the following grounds:

- 129 (a) that the notice requires the carrying out of any works which are not necessary for giving the public reasonable access to the access land in question⁹;
- 130 (b) in the case of works to provide a means of access¹⁰, that the means of access should be provided elsewhere, or that a different means of access should be provided¹¹; and
- 131 (c) that any of the works have already been carried out¹².

On an appeal, the Secretary of State or the Welsh Ministers may confirm the notice with or without modifications, or cancel the notice¹³.

A person who is authorised by the appropriate countryside body¹⁴, a national park authority¹⁵, or the Forestry Commission¹⁶ to do so may enter any land in connection with an appeal¹⁷.

¹ ie a notice under the Countryside and Rights of Way Act 2000 s 36(3) (see PARA 605) or s 37(1) (see PARA 606).

² As to the meaning of 'owner' see PARA 604 note 10.

³ Countryside and Rights of Way Act 2000 s 38(1). Regulations may make provision as to the period within which and manner in which appeals are to be brought, the advertising of such an appeal, and the manner in which such appeals are to be considered: s 38(6). As to such regulations see the Access to the Countryside (Means of Access, Appeals) (England) Regulations 2004, SI 2004/3305; and the Countryside Access (Means of Access, Appeals etc) (Wales) Regulations 2005, SI 2005/1270.

The Countryside and Rights of Way Act 2000 ss 7, 8, Sch 3 (see PARA 610) have effect in relation to an appeal under s 38 as they have effect in relation to an appeal under s 6 (see PARA 610): s 38(5). Where an appeal has been brought under s 38 against a notice under s 36(3) (see PARA 605) or s 37(1) (see PARA 606), the access authority may not exercise its powers under s 36(5) (see PARA 605) or s 37(5) (see PARA 606), as the case may be, pending the determination or withdrawal of the appeal: s 38(7).

⁴ ie a notice under the Countryside and Rights of Way Act 2000 s 36(3) (see PARA 605).

- 5 Countryside and Rights of Way Act 2000 s 38(2)(a).
- 6 Countryside and Rights of Way Act 2000 s 38(2)(b).
- 7 Countryside and Rights of Way Act 2000 s 38(2)(c).
- 8 le a notice under the Countryside and Rights of Way Act 2000 s 37(1) (see PARA 606).
- 9 Countryside and Rights of Way Act 2000 s 38(3)(a).
- 10 As to the meaning of 'means of access' see PARA 604 note 3.
- 11 Countryside and Rights of Way Act 2000 s 38(3)(b).
- 12 Countryside and Rights of Way Act 2000 s 38(3)(c).
- 13 Countryside and Rights of Way Act 2000 s 38(4).
- 14 As to the meaning of 'appropriate countryside body' see PARA 580 note 2.
- 15 As to national park authorities see PARA 526 et seq.
- 16 As to the Forestry Commission see PARA 529; and **FORESTRY** vol 52 (2009) PARA 34 et seq.
- 17 Countryside and Rights of Way Act 2000 s 40(1)(d), (3)(c), (4)(b). The text refers to an appeal under Pt 1 (ss 1-46): s 40(1)(d). See also ss 40(5)-(10), 41; and PARA 583 note 11.

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608. Order to remove obstruction.

Where at any time two or more access notices¹ relating to a means of access² have been given to any person within the preceding 36 months, a magistrates' court may, on the application of the access authority³, order that person:

- 132 (1) within such time as may be specified in the order, to take such steps as may be so specified to remove any obstruction of that means of access⁴; and
- 133 (2) not to obstruct that means of access at any time when the right of public access⁵ is exercisable⁶.

If a person fails to comply with such an order he is liable to a fine⁷, and the access authority may remove any obstruction of the means of access and recover from that person the costs reasonably incurred by it in doing so⁸.

1 'Access notice' means a notice under the Countryside and Rights of Way Act 2000 s 36(3) (see PARA 605) or s 37(1) (see PARA 606) in respect of which the period specified in the notice has expired, other than a notice in respect of which an appeal is pending or which has been cancelled on appeal: s 39(3).

2 As to the meaning of 'means of access' see PARA 604 note 3.

3 As to the meaning of 'access authority' see PARA 590.

4 Countryside and Rights of Way Act 2000 s 39(1)(a).

5 le conferred under the Countryside and Rights of Way Act 2000 s 2(1) (see PARA 583).

6 Countryside and Rights of Way Act 2000 s 39(1)(b).

7 Countryside and Rights of Way Act 2000 s 39(2)(a). The fine, on summary conviction, must not exceed level 3 on the standard scale: see s 39(2)(a). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

8 Countryside and Rights of Way Act 2000 s 39(2)(b). A person who is authorised by a national park authority or a local highway authority to do so may enter land for the purpose of ascertaining whether an offence under s 39 has been or is being committed: s 40(2)(b), (3)(e). As to national park authorities see PARA 526. As to the meaning of 'local highway authority' see PARA 590 note 3. See also ss 40(5)-(10), 41; and PARA 583 note 11. A person who is authorised by a local highway authority or a national park authority to do so may enter any land for the purpose of determining whether the local highway authority or national park authority should carry out works under s 39(2)(b): s 40(2)(a), (3)(d).

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D. MAPS AND NOTICES

609. Duty to prepare and publish maps.

It is the duty of Natural England¹, in respect of England outside Inner London², and the Countryside Council for Wales³, in respect of Wales, to prepare maps which together show all registered common land⁴, and all open country⁵.

A map so prepared must distinguish between open country and registered common land, but need not distinguish between different categories of open country⁶.

In preparing a map, the appropriate countryside body⁷ may determine not to show as open country areas of open country which are so small that the body considers that their inclusion would serve no useful purpose⁸, and may determine that any boundary of an area of open country is to be treated as coinciding with a particular physical feature (whether the effect is to include other land as open country or to exclude part of an area of open country)⁹.

The appropriate countryside body must:

- 134 (1) issue in draft form any map prepared by it¹⁰;
- 135 (2) consider any representations received by it within the prescribed¹¹ period with respect to the showing of, or the failure to show, any area of land on the map as registered common land or as open country¹²;
- 136 (3) confirm the map with or without modifications¹³;
- 137 (4) if the map has been confirmed without modifications, issue it in provisional form¹⁴; and
- 138 (5) if the map has been confirmed with modifications, prepare a map incorporating the modifications, and issue that map in provisional form¹⁵.

A person who is authorised by the appropriate countryside body to do so may enter any land for the purpose of surveying it in connection with the preparation of any map¹⁶.

1 As to Natural England see PARA 523.

2 As to the meaning of 'Inner London' see PARA 580 note 4.

3 As to the Countryside Council for Wales see PARA 524.

4 As to the meaning of 'registered common land' see PARA 580 note 3. As to common land see further **COMMONS**.

5 Countryside and Rights of Way Act 2000 s 4(1), (2) (s 4(1) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 155). As to the meaning of 'open country' see PARA 582. The provisions of the Countryside and Rights of Way Act 2000 s 4(1), (2) have effect subject to ss 4(4)-(5), 5-9 (see the text and notes 6-15; and PARAS 610-611): s 4(3).

Regulations may make provision supplementing the provisions of ss 4-10 (see the text and notes 6-15; and PARAS 610-612): s 11(1). The regulations may in particular make provision with respect to:

- 55 (1) the scale on which maps are to be prepared (s 11(2)(a));
- 56 (2) the manner and form in which they are to be prepared and issued (s 11(2)(b));

- 57 (3) consultation with access authorities, local access forums and other persons on maps in draft form (s 11(2)(c));
- 58 (4) the steps to be taken for informing the public of the issue of maps in draft form, provisional form or conclusive form (s 11(2)(d));
- 59 (5) the manner in which maps in draft form, provisional form or conclusive form are to be published or to be made available for inspection (s 11(2)(e));
- 60 (6) the period within which and the manner in which representations on a map in draft form may be made to the appropriate countryside body (s 11(2)(f));
- 61 (7) the confirmation of a map under s 5(c) (see the text and note 13) (s 11(2)(g));
- 62 (8) the period within which and manner in which appeals under s 6 (see PARA 610) are to be brought (s 11(2)(h));
- 63 (9) the advertising of such an appeal (s 11(2)(i));
- 64 (10) the manner in which such appeals are to be considered (s 11(2)(j));
- 65 (11) the procedure to be followed on a review under s 10 (see PARA 612), including the issue of maps in draft form, provisional form and conclusive form on a review (s 11(2)(k)); and
- 66 (12) the correction by the appropriate countryside body of minor errors or omissions in maps (s 11(2)(l)).

Regulations made by virtue of s 11(2)(b) (see head (2)) or s 11(2)(e) (see head (5)) may authorise or require a map to be prepared, issued, published or made available for inspection in electronic form, but must require any map in electronic form to be capable of being reproduced in printed form: s 11(3). Regulations made by virtue of s 11(2)(k) (see head (11)) may provide for any of the provisions of Pt I Ch I (ss 1-20) relating to appeals (see PARA 610) to apply (with or without modifications) in relation to an appeal against a map issued in provisional form on a review: s 11(4). As to the regulations that have been made under s 11 see the Access to the Countryside (Maps in Draft Form) (England) Regulations 2001, SI 2001/3301; the Countryside Access (Draft Maps) (Wales) Regulations 2001, SI 2001/4001 (amended by SI 2002/1796); the Access to the Countryside (Provisional and Conclusive Maps) (England) Regulations 2002, SI 2002/1710; the Countryside Access (Appeals Procedures) (Wales) Regulations 2002, SI 2002/1794; the Countryside Access (Provisional and Conclusive Maps) (Wales) Regulations 2002, SI 2002/1796; the Access to the Countryside (Provisional and Conclusive Maps) (England) (Amendment) Regulations 2003, SI 2003/32; the Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003, SI 2003/142; the Access to the Countryside (Correction of Provisional and Conclusive Maps) (England) Regulations 2002, SI 2003/1591 (amended by SI 2005/2027); and the Access to the Countryside (Correction of Provisional and Conclusive Maps) (England) (Amendment) Regulations 2005, SI 2005/2027.

6 Countryside and Rights of Way Act 2000 s 4(4).

7 As to the meaning of 'appropriate countryside body' see PARA 580 note 2.

8 Countryside and Rights of Way Act 2000 s 4(5)(a).

9 Countryside and Rights of Way Act 2000 s 4(5)(b).

10 Countryside and Rights of Way Act 2000 s 5(a).

11 'Prescribed' means prescribed by regulations: see the Countryside and Rights of Way Act 2000 s 45(1). As to the regulations made see note 5.

12 Countryside and Rights of Way Act 2000 s 5(b).

13 Countryside and Rights of Way Act 2000 s 5(c).

14 Countryside and Rights of Way Act 2000 s 5(d).

15 Countryside and Rights of Way Act 2000 s 5(e).

16 Countryside and Rights of Way Act 2000 s 40(1)(a). As to the exercise of a power under s 40 see ss 40(5)-(10), 41; and PARA 583 note 11.

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610. Appeals.

Any person having an interest in any land¹ may appeal, in the case of land in England, to the Secretary of State or, in the case of land in Wales, to the Welsh Ministers² against the showing of that land on a map in provisional form as registered common land³ or as open country⁴.

An appeal relating to the showing of any land as registered common land may be brought only on the ground that the land is not registered common land⁵.

An appeal relating to the showing of any land as open country may be brought only on the ground that:

- 139 (1) the land does not consist wholly or predominantly of mountain, moor, heath or down⁶; and
- 140 (2) to the extent that the appropriate countryside body⁷ has exercised its discretion⁸ to treat land which is not open country as forming part of an area of open country, the body ought not to have done so⁹.

On an appeal the Secretary of State or the Welsh Ministers may: (a) approve the whole or part of the map which is the subject of the appeal, with or without modifications¹⁰; or (b) require the appropriate countryside body to prepare a new map¹¹ relating to all or part of the area covered by the map which is the subject of the appeal¹².

Before determining an appeal, the Secretary of State or the Welsh Ministers may cause the appeal to take, or continue in, the form of a hearing, or cause a local inquiry to be held¹³. The Secretary of State or the Welsh Ministers must so act if a request is made by either party to the appeal to be heard with respect to the appeal¹⁴.

The Secretary of State or the Welsh Ministers may appoint any person to exercise on his or their behalf, with or without payment, the function of determining an appeal¹⁵ or any matter involved in such an appeal¹⁶, or refer any matter involved in such an appeal to such person as the Secretary of State or the Welsh Ministers may appoint for the purpose, with or without payment¹⁷.

A person who is authorised by the appropriate countryside body¹⁸ or national park authority¹⁹ to do so may enter any land in connection with an appeal²⁰.

1 As to the meaning of 'person having an interest in land' see PARA 580 note 8.

2 As to the Secretary of State and the Welsh Ministers see PARA 519.

3 As to the meaning of 'registered common land' see PARA 580 note 3. As to common land see further **COMMONS**.

4 Countryside and Rights of Way Act 2000 s 6(1). As to the meaning of 'open country' see PARA 582. As to regulations supplementing these provisions see PARA 609 note 5.

5 Countryside and Rights of Way Act 2000 s 6(2).

6 As to the meaning of 'mountain, moor, heath or down' see PARA 582 note 13.

7 As to the meaning of 'appropriate countryside body' see PARA 580 note 2.

8 le under the Countryside and Rights of Way Act 2000 s 4(5)(b) (see PARA 609).

9 Countryside and Rights of Way Act 2000 s 6(3).

10 Countryside and Rights of Way Act 2000 s 6(4)(a).

11 le under the Countryside and Rights of Way Act 2000 s 4 (see PARA 609).

12 Countryside and Rights of Way Act 2000 s 6(4)(b).

13 Countryside and Rights of Way Act 2000 s 7(1). The provisions of the Local Government Act 1972 s 250(2)-(5) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 105) apply in relation to hearings or local inquiries under the Countryside and Rights of Way Act 2000 s 7 as they apply in relation to local inquiries under the Local Government Act 1972 s 250 but as if the reference to the person appointed to hold the inquiry were a reference to the Secretary of State or the Welsh Ministers or to the person appointed to conduct the hearing or hold the inquiry, and as if the reference to the minister causing an inquiry to be held were to the Secretary of State or the Welsh Ministers: Countryside and Rights of Way Act 2000 s 7(2). Where:

67 (1) for the purposes of an appeal, the Secretary of State is, or the Welsh Ministers are, required to cause the appeal to take, or continue in, the form of a hearing, or to cause a local inquiry to be held; and

68 (2) the inquiry or hearing does not take place; and

69 (3) if it had taken place, the Secretary of State or the Welsh Ministers or a person appointed by the Secretary of State or the Welsh Ministers would have had power to make an order under the Local Government Act 1972 s 250(5) requiring any party to pay the costs of the other party,

the power to make such an order may be exercised, in relation to costs incurred for the purposes of the inquiry or hearing, as if it had taken place: Countryside and Rights of Way Act 2000 s 7(3). Section 7 has effect subject to s 8 (see the text and notes 15-17): s 7(4).

14 Countryside and Rights of Way Act 2000 s 7(1).

15 le under the Countryside and Rights of Way Act 2000 s 6 (see the text and notes 1-12).

16 Countryside and Rights of Way Act 2000 s 8(1)(a). Provision is made by Sch 3 as to such a person's appointment (Sch 3 para 2), powers (Sch 3 para 3), the holding of local inquiries and other hearings by appointed persons (Sch 3 para 4), local inquiries, their evidence and costs (Sch 3 para 5), revocation of appointments and making of new appointments (Sch 3 para 6). Certain acts and omissions of the appointed person are to be treated as those of the appointing authority: Sch 3 para 7.

17 Countryside and Rights of Way Act 2000 s 8(1)(b).

18 As to the meaning of 'appropriate countryside body' see PARA 580 note 2.

19 As to national park authorities see PARA 526 et seq.

20 Countryside and Rights of Way Act 2000 s 40(2)(d), (3)(c). As to the exercise of a power under s 40 see ss 40(5)-(10), 41; and PARA 583 note 11.

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611. Maps in conclusive form.

The appropriate countryside body¹ must issue a map in conclusive form where:

- 141 (1) the time within which any appeal² may be brought in relation to a map in provisional form has expired and no appeal has been brought³; or
- 142 (2) every appeal in relation to a map has been determined by the map or part of it being approved without modifications, or has been withdrawn⁴.

Where either of the conditions in heads (1) and (2) is satisfied in relation to any part of a map in provisional form, the Secretary of State (as respects England) or the Welsh Ministers (as respects Wales) may direct the relevant countryside body to issue that part of the map as a map in conclusive form⁵.

Where:

- 143 (a) every appeal brought in relation to a map in provisional form has been determined or withdrawn⁶; and
- 144 (b) on one or more appeals, the map or any part of it has been approved with modifications⁷,

the appropriate countryside body must prepare a map which covers the area covered by the map in provisional form (or the part or parts of the map in provisional form that have been approved with or without modifications) and incorporates the modifications, and must issue it as a map in conclusive form⁸. Where, on an appeal, part of a map in provisional form has been approved with modifications but the condition in head (b) is not yet satisfied, the Secretary of State (as respects England) or the Welsh Ministers (as respects Wales) may direct the appropriate countryside body to issue a map which covers the area covered by that part of the map in provisional form and incorporates the modifications, and to issue it as a map in conclusive form⁹.

Where a map in conclusive form has been issued in compliance with a direction¹⁰, then the provisions requiring the appropriate countryside body to issue a map¹¹ have effect as if any reference to the map in provisional form were a reference to the part not affected by the direction¹².

A document purporting to be certified on behalf of the appropriate countryside body to be a copy of or of any part of a map in conclusive form issued by that body¹³ is receivable in evidence and is to be deemed, unless the contrary is shown, to be such a copy¹⁴.

1 As to the meaning of 'appropriate countryside body' see PARA 580 note 2.

2 ie any appeal brought under the Countryside and Rights of Way Act 2000 s 6: see PARA 610.

3 Countryside and Rights of Way Act 2000 s 9(1)(a). As to regulations supplementing these provisions see PARA 609 note 5.

4 Countryside and Rights of Way Act 2000 s 9(1)(b).

5 Countryside and Rights of Way Act 2000 s 9(3). As to the Secretary of State and the Welsh Ministers see
PARA 519.

6 Countryside and Rights of Way Act 2000 s 9(2)(a).

7 Countryside and Rights of Way Act 2000 s 9(2)(b).

8 Countryside and Rights of Way Act 2000 s 9(2).

9 Countryside and Rights of Way Act 2000 s 9(4).

10 le under the Countryside and Rights of Way Act 2000 s 9(3) (see the text and note 5) or s 9(4) (see the
text and note 9).

11 le the provisions of the Countryside and Rights of Way Act 2000 s 9(1) (see the text and notes 1-4) and s
9(2) (see the text and note 6-8).

12 Countryside and Rights of Way Act 2000 s 9(5).

13 le for the purposes of the Countryside and Rights of Way Act 2000 Pt I (ss 1-46).

14 Countryside and Rights of Way Act 2000 s 9(6).

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612. Review of maps.

Where the appropriate countryside body¹ has issued a map in conclusive form² in respect of any area, it is the duty of the body from time to time, to undertake a review³, to consider:

- 145 (1) whether any land shown on that map as open country⁴ or registered common land⁵ is open country or registered common land at the time of the review⁶; and
- 146 (2) whether any land in that area which is not so shown ought to be so shown⁷.

A review must be undertaken:

- 147 (a) in the case of the first review, not more than ten years after the issue of the map in conclusive form⁸; and
- 148 (b) in the case of subsequent reviews, not more than ten years after the previous review⁹.

A person who is authorised by the appropriate countryside body to do so may enter any land for the purpose of surveying it in connection with the review of any map¹⁰.

1 As to the meaning of 'appropriate countryside body' see PARA 580 note 2.

2 As to maps issued in conclusive form see PARA 611.

3 Ie under the Countryside and Rights of Way Act 2000 s 10.

4 As to the meaning of 'open country' see PARA 582.

5 As to the meaning of 'registered common land' see PARA 580 note 3. As to common land see further **COMMONS**.

6 Countryside and Rights of Way Act 2000 s 10(1)(a). As to regulations supplementing these provisions see PARA 609 note 5.

7 Countryside and Rights of Way Act 2000 s 10(1)(b).

8 Countryside and Rights of Way Act 2000 s 10(2)(a). Regulations may amend s 10(2)(a), (b) by substituting for the period for the time being specified in either of those provisions such other period as may be specified in the regulations: s 10(3). At the date at which this volume states the law, no such regulations had been made.

9 Countryside and Rights of Way Act 2000 s 10(2)(b). See note 8.

10 Countryside and Rights of Way Act 2000 s 40(1)(a). As to the exercise of a power under s 40 see ss 40(5)-(10), 41; and PARA 583 note 11.

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613. Notices.

An access authority¹ may erect and maintain:

- 149 (1) notices indicating the boundaries of access land² and excepted land³; and
 - 150 (2) notices informing the public of:
- 9
- 10. (a) the effect of the general restrictions⁴;
 - 11. (b) the exclusion or restriction⁵ of public access to any land⁶; and
 - 12. (c) any other matters relating to access land or to public access to land which the access authority considers appropriate⁷.
- 10

Before erecting a notice on any land the access authority must, if reasonably practicable, consult the owner or occupier of the land⁸.

An access authority may also, as respects any access land in its area, defray or contribute towards, or undertake to defray or contribute towards, expenditure incurred or to be incurred in relation to the land by any person in displaying such notices⁹.

A person who is authorised by a local highway authority¹⁰ or a national park authority¹¹ to do so may enter any land for the purposes of erecting or maintaining such notices¹².

1 As to the meaning of 'access authority' see PARA 590.

2 As to the meaning of 'access land' see PARA 580.

3 Countryside and Rights of Way Act 2000 s 19(1)(a). As to the meaning of 'excepted land' see PARA 584.

4 Countryside and Rights of Way Act 2000 s 19(1)(b)(i). The text refers to the general restrictions under Sch 2 (see PARA 583 note 12).

5 See access under the Countryside and Rights of Way Act 2000 Pt I Ch II (ss 21-33) (see PARA 594 et seq).

6 Countryside and Rights of Way Act 2000 s 19(1)(b)(ii). The text refers to public access to land under s 2(1) (see PARA 583). The reference to the exclusion or restriction of access by virtue of s 2(1) is to be interpreted in accordance with s 21(2), (3) (see PARA 580): s 19(2).

7 Countryside and Rights of Way Act 2000 s 19(1)(b)(iii).

8 Countryside and Rights of Way Act 2000 s 19(3).

9 Countryside and Rights of Way Act 2000 s 19(4).

10 As to the meaning of 'local highway authority' see PARA 590 note 3.

11 As to national park authorities see PARA 526.

12 Countryside and Rights of Way Act 2000 s 40(2)(c), (3)(f). As to the exercise of a power under s 40 see ss 40(5)-(10), 41; and PARA 583 note 11.

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614. Offence regarding notices.

If any person places or maintains on or near any access land¹, or on or near a way leading to any access land, a notice containing any false or misleading information likely to deter the public from exercising the right of public access², he is liable to a fine³.

The court before whom a person is convicted of such an offence may, in addition to or in substitution for the imposition of a fine, order him to remove the notice in respect of which he is convicted within such period, not being less than four days, as may be specified in the order⁴. A person who fails to comply with such an order is guilty of a further offence⁵.

A person who is authorised by a local highway authority⁶ or by a national park authority⁷ to do so may enter any land for the purpose of ascertaining whether an offence under these provisions⁸ has been or is being committed⁹.

1 As to the meaning of 'access land' see PARA 580.

2 Ie the right under the Countryside and Rights of Way Act 2000 s 2(1) (see PARA 583).

3 Countryside and Rights of Way Act 2000 s 14(1). Such a person is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 14(1). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

4 Countryside and Rights of Way Act 2000 s 14(2).

5 Countryside and Rights of Way Act 2000 s 14(3). Such a person is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 14(3).

6 As to the meaning of 'local highway authority' see PARA 590 note 3.

7 As to national park authorities see PARA 526.

8 Ie under the Countryside and Rights of Way Act 2000 s 14.

9 Countryside and Rights of Way Act 2000 s 40(2)(b), (3)(e). As to the exercise of a power under s 40 see ss 40(5)-(10), 41; and PARA 583 note 11.

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(iii) Access under Agreements and Orders

A. MAKING AND CONTENT OF AGREEMENTS AND ORDERS

615. Making of access agreements.

A local planning authority¹ may make an access agreement² with any person who has an interest in any land³ in its area which is open country⁴. Where the land is outside a national park⁵ and comprises all or any part of, or land adjacent to, a river⁶ or canal, it must first consult with and seek the consent of the Environment Agency⁷ and such authorities having statutory functions relating to it as the Secretary of State or the Welsh Ministers may either generally or in any particular case direct⁸.

An access agreement may be either irrevocable or subject to provisions for revocation or variation⁹, and may provide for payment to be made by the planning authority to the other party either in consideration of the making of the agreement or in respect of expenditure to be incurred by the other party as a result of the agreement, or on both of these grounds¹⁰.

Certain limited owners are expressly empowered to enter into access agreements¹¹.

1 As to the meaning of 'local planning authority' see PARA 636 note 12.

2 As to access agreements see also PARA 581.

3 As to the meaning of 'land' see PARA 636 note 1. Where the person entering into the agreement has only a limited interest in the land the agreement affects only his interest and does not prejudice the rights of the owner of any other interest in the land or impose any restrictions on him or confer any right against him: National Parks and Access to the Countryside Act 1949 s 64(6).

4 National Parks and Access to the Countryside Act 1949 s 64(1) (amended by the Local Government Act 1974 ss 35(1), 42(2), Sch 6 para 6(1), Sch 8). As to the meaning of 'open country' see PARA 582.

5 As to national parks see PARA 636 et seq.

6 'River' includes a stream and the tidal part of a river or stream: Countryside Act 1968 s 16(9).

7 As to the Environment Agency see PARA 528; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.

8 Countryside Act 1968 s 16(7) (amended by virtue of SI 1996/593). The Countryside Act 1968 s 16(7) is applied, with the necessary modifications, to access orders made by the Secretary of State or the Welsh Ministers: s 16(8). As to access orders see PARAS 581, 616. The Countryside Act 1968 refers to the Minister for Housing and Local Government, whose functions have been transferred to the Secretary of State or the Welsh Ministers: see PARA 519.

Schedule 1 (see PARA 646 note 11) has effect where any authority consulted refuses consent: s 16(7).

9 National Parks and Access to the Countryside Act 1949 s 64(3).

10 National Parks and Access to the Countryside Act 1949 s 64(2).

11 See the National Parks and Access to the Countryside Act 1949 s 64(4), under which the provisions of the Forestry Act 1967 Sch 2 (which replaced the Forestry Act 1947 s 2 (repealed)) apply to an access agreement as they apply to a forestry dedication covenant: see **FORESTRY** vol 52 (2009) PARAS 116-119.

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616. Making of access orders.

An access order¹ must not be made unless it appears to the authority having power to make it that it is impracticable to make an access agreement in respect of the land concerned which would adequately secure to the public access for open-air recreation². Similarly, where an access agreement is already in force, no access order may be made unless the authority having power to make it is of the opinion that the agreement does not adequately secure such access³.

The authority empowered to make an access order is the local planning authority⁴ in the area of which the land is situated⁵, but the order must be submitted to the Secretary of State or the Welsh Ministers⁶, and does not become effective until confirmed by him or them⁷. Before an access order is made in respect of land in a national park or an area of outstanding natural beauty⁸, the local planning authority must consult with Natural England (where the land is in England) or the Countryside Council for Wales (where the land is in Wales)⁹; and where the authority has not made an order in respect of any such land and Natural England or the Council thinks it desirable that an order should be made, it may request the authority to make the order¹⁰. In the case of land outside a national park comprising all or any part of, or land adjacent to, a river (including any expanse of water through which a river or some part of the flow of the river runs) or canal, the Environment Agency¹¹ and such other authority as the Secretary of State or the Welsh Ministers may direct must also be consulted¹².

Any person may enter upon land for the purpose of surveying it in connection with the making of an access order, if duly authorised in writing by the Secretary of State or the Welsh Ministers or other authority having power to make the order¹³.

1 As to access orders see also PARA 581.

2 National Parks and Access to the Countryside Act 1949 s 65(2)(b). As to the meaning of 'land' see PARA 636 note 1; and as to the meaning of 'open-air recreation' see PARA 581 note 1.

The provisions of Sch 1 (see PARA 636) apply to the making, confirmation, coming into operation and validity of access orders: s 65(4).

3 National Parks and Access to the Countryside Act 1949 s 65(2)(a).

4 As to the meaning of 'local planning authority' see PARA 636 note 12.

5 National Parks and Access to the Countryside Act 1949 s 65(1).

6 National Parks and Access to the Countryside Act 1949 s 65(1). The National Parks and Access to the Countryside Act 1949 refers to the Minister of Town and Country Planning, whose functions have been transferred to the Secretary of State or the Welsh Ministers: see PARA 519. Access orders submitted to the Secretary of State or the Welsh Ministers must be made in duplicate and accompanied by two copies of the order: see the National Parks and Access to the Countryside Regulations 1950, SI 1950/1066, reg 16. Before submitting an access order to the Secretary of State or the Welsh Ministers, the authority making it must give notice in the prescribed form (see Sch 2) stating inter alia the effect of the order, that it has been made and is about to be submitted for confirmation, and specifying the time and manner in which representations or objections may be made: National Parks and Access to the Countryside Act 1949 Sch 1 para 1(1)(c). The notice must be given by publication in the London Gazette and in at least one local newspaper (Sch 1 para 1(3)(a) (amended by the Local Government (Wales) Act 1994 Sch 6 para 15(3))), and, unless the Secretary of State otherwise directs or the Welsh Ministers otherwise direct, by serving a like notice on every owner, lessee and occupier, except tenants for a month or less or statutory tenants, of the land (National Parks and Access to the

Countryside Act 1949 Sch 1 para 1(3)(b) (amended by the Highways Act 1959 Sch 25)). See also the Housing Repairs and Rents Act 1954 s 50(1), (2) (substituted by the Acquisition of Land Act 1981 Sch 4 para 9). As to the form of notices see the National Parks and Access to the Countryside Regulations 1950, SI 1950/1066, Sch 2 (amended by SI 1963/968; SI 1999/416). Where notice is to be served on the owner of land which is vested in the incumbent of a benefice of the Church of England, a like notice must be served on the Diocesan Board of Finance for the diocese in which the land is situated: National Parks and Access to the Countryside Act 1949 Sch 1 para 1(4) (amended by the Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 4). Where any notice is required to be given under the National Parks and Access to the Countryside Act 1949 Sch 1 para 1 by any person in respect of any land which is already in a national park for which a national park authority is the local planning authority, that person must serve a copy of the notice on that authority: Sch 1 para 1(3A) (added by the Environment Act 1995 Sch 10 para 2(9)). As to national park authorities as local planning authorities see PARA 644. As to national park authorities generally see PARA 526. As to national parks see PARA 636 et seq.

7 National Parks and Access to the Countryside Act 1949 s 65(1). If no representations or objections are duly made (see note 6) or are withdrawn, the Secretary of State or Welsh Ministers may confirm the order with or without modifications: Sch 1 para 2(1). In the case of representations or objections made by a local authority, the Secretary of State or the Welsh Ministers, before confirming the order, must cause a local inquiry to be held; and, in any other case, must either cause such an inquiry to be held or afford the person making the representations or objections an opportunity of being heard by a person appointed for the purpose: Sch 1 para 2(2) (amended by the Highways Act 1959 Sch 25). For these purposes, 'local authority' does not include, in relation to an order designating a national park in England, a parish council or, in relation to an order designating a national park in Wales, a community council: National Parks and Access to the Countryside Act 1949 Sch 2 para 2A (added by the Natural Environment and Rural Communities Act 2006 s 60(1), (5)). After consideration of any report made, the Secretary of State or the Welsh Ministers may confirm the order: National Parks and Access to the Countryside Act 1949 Sch 1 para 2(2) (as so amended). In no case, however, may he or they confirm an order affecting land not affected by the order as submitted to him or them except after giving notice of his or their proposal, causing an inquiry to be held and considering the consequent report: see Sch 1 para 2(3) (amended by the Highways Act 1959 Sch 25). Prior consultation with the Secretary of State or the Welsh Ministers is required in the case of an order which may adversely affect water supply: see the National Parks and Access to the Countryside Act 1949 Sch 1 para 2(4) (amended by the Water Act 1989 Sch 25 para 13(3); SI 1968/1699; and by virtue of SI 1996/593). On confirmation of any order the authority must publish notice of its confirmation and effect: see the National Parks and Access to the Countryside Act 1949 Sch 1 para 3. The procedure for questioning the validity of any order is governed by Sch 1 Pt III (paras 8-11).

8 As to areas of outstanding natural beauty see PARA 658 et seq.

9 As to Natural England see PARA 523; and as to the Countryside Council for Wales see PARA 524.

10 National Parks and Access to the Countryside Act 1949 s 65(5) (amended by the Environmental Protection Act 1990 Sch 8 para 1(1), (9); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 10(h)); National Parks and Access to the Countryside Act 1949 s 65(5A) (added by the Environmental Protection Act 1990 Sch 8 para 1(1), (9); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 10(h)).

11 As to the Environment Agency see PARA 528; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.

12 See the Countryside Act 1968 s 16(7) (amended by virtue of SI 1996/593); the Countryside Act 1968 s 16(8); and PARA 615.

13 See the National Parks and Access to the Countryside Act 1949 s 108(1)(c); and PARA 669.

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617. Contents of access agreements and orders.

An access agreement or access order¹ may contain all expedient provisions for securing that there are sufficient means of access² to the land by the public³. This may be effected by means of:

- 151 (1) the improvement or repair of any means of access to the land in existence at the time when the agreement or order is made⁴;
- 152 (2) the construction of new means of access⁵;
- 153 (3) the maintenance of existing or new means of access⁶; and
- 154 (4) the imposition of restrictions on the destruction, removal, alteration or stopping up of any means of access to the land, or the doing of any thing whereby the use of any such means of access by the public would be impeded⁷.

No provision of an access order may apply to excepted land⁸, or affect the doing of anything by which land becomes excepted land, or, subject to certain exceptions⁹, require work to be carried out at the expense of anyone having an interest in the land¹⁰. For the purpose of preventing or restricting the conversion of land which is open country¹¹ into excepted land, an access agreement may impose such restrictions on the exercise of rights over the land by the persons who can be bound by the agreement as appear to the local planning authority¹² and the other parties to the agreement to be expedient¹³.

An access order must contain a map on a prescribed scale¹⁴ defining in the prescribed manner¹⁵ the land comprised in the order and, so far as appears practicable, any of the land which in the opinion of the authority making the order is at that time excepted land; and the order must also include any descriptive matter which may be prescribed or which may appear requisite for the purposes of the order¹⁶.

1 As to access agreements and access orders see PARA 581. As to the making of access agreements see PARA 615; and as to the making of access orders see PARA 616.

2 'Means of access', in relation to land, means any opening in a wall, fence or hedge bounding the land or any part of it, with or without a gate, stile or other works for regulating passage through the opening, any stairs or steps for enabling persons to enter the land or any part of it, or any bridge, stepping stone or other works for crossing a watercourse, ditch or bog on the land or adjoining its boundary: National Parks and Access to the Countryside Act 1949 s 67(6). As to the meaning of 'land' see PARA 636 note 1.

3 National Parks and Access to the Countryside Act 1949 s 67(1). Negotiated agreements often contain provisions not mentioned in s 67 for the protection of the countryside or the landowner; these may include eg provision for insurance against public liability, provision to deter trespass, provision for keeping dogs under control, and provision for the exclusion of persons causing a nuisance.

4 National Parks and Access to the Countryside Act 1949 s 67(2)(a).

5 National Parks and Access to the Countryside Act 1949 s 67(2)(b).

6 National Parks and Access to the Countryside Act 1949 s 67(2)(d).

7 National Parks and Access to the Countryside Act 1949 s 67(2)(c).

8 As to the meaning of 'excepted land' see PARA 584.

9 le as expressly provided under the National Parks and Access to the Countryside Act 1949 s 67(4), (5): see PARA 622.

10 National Parks and Access to the Countryside Act 1949 s 67(3). An access order may provide for work to be carried out, either at one time or from time to time, on land comprised in the order under the powers conferred by s 13 (see PARA 646): s 75(1).

11 As to the meaning of 'open country' see PARA 582.

12 As to the meaning of 'local planning authority' see PARA 644.

13 Countryside Act 1968 s 18.

14 The minimum scale of an access order map is 6 inches to 1 mile: National Parks and Access to the Countryside Regulations 1950, SI 1950/1066, reg 11.

15 See the National Parks and Access to the Countryside Regulations 1950, SI 1950/1066, reg 12.

16 National Parks and Access to the Countryside Act 1949 s 65(3).

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618. Revocation and variation of access orders.

Any access order¹ may be varied or revoked by a subsequent order made in the like manner and subject to the like provisions; but, without prejudice to the making of a new access order, an access order must not be varied so as to comprise land not comprised in the original order².

1 As to access orders see PARA 581. As to the making of access orders see PARA 616.

2 National Parks and Access to the Countryside Act 1949 s 110(2). As to the meaning of 'land' see PARA 636 note 1.

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B. RESTRICTIONS ON ACCESS

619. Effect of access agreements or orders on use of land.

A person having an interest in land¹, other than excepted land², comprised in an access agreement or access order³ must not carry out any work on it which would result in the area of land to which the public are able to have access being substantially reduced⁴. This prohibition does not, however, prevent anything being done which would cause any land to become excepted land⁵. Nevertheless, an access agreement may impose restrictions for the purpose of preventing or restricting the conversion of land which is open country⁶ into excepted land⁷.

1 As to the meaning of 'interest' see PARA 639 note 4. As to the meaning of 'land' see PARA 636 note 1.

2 As to the meaning of 'excepted land' see PARA 584.

3 As to access agreements and access orders see PARA 581. As to the making of access agreements see PARA 615; and as to the making of access orders see PARA 616.

4 National Parks and Access to the Countryside Act 1949 s 66(1). As to the power of the local planning authority to require a contravention of this restriction to be remedied see s 68; and PARA 624. As to the meaning of 'local planning authority' see PARA 636 note 12. Where the land is comprised in an access agreement this restriction against carrying out works affects only the interests in the land of the parties to the agreement and not those of any person having any other interest in the land: see s 64(6); and PARA 615 note 3.

5 National Parks and Access to the Countryside Act 1949 s 66(1) proviso.

6 As to the meaning of 'open country' see PARA 582.

7 See the Countryside Act 1968 s 18; and PARA 617.

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620. Danger areas excluded from access agreements and orders.

The authority making an access agreement or order¹ must so delimit the land to which the agreement or order applies as to exclude all land which, by reason of anything done on other land contiguous or adjacent to it, it appears to the authority expedient to exclude for the purpose of avoiding danger to the public or to persons employed on any of the land².

Similarly, while an access agreement or order is in force, if the authority by which it was made is satisfied that by reason of anything done or proposed to be done on any of the land comprised in the agreement or order or on any contiguous or adjacent land, it is expedient to exclude such land for the purpose of avoiding danger to the public or persons employed on the land, it must vary the agreement or order so as to exclude that land³. Such a variation of an agreement may be effected even if the agreement is expressed to be irrevocable⁴; and where the concurrence of any party to an agreement, other than the authority, or of the successor in title to his interest, cannot be obtained, the authority may effect the variation by order⁵.

¹ As to access agreements and access orders see PARA 581. As to the making of access agreements see PARA 615; and as to the making of access orders see PARA 616.

² National Parks and Access to the Countryside Act 1949 s 80(1). As to the meaning of 'land' see PARA 636 note 1.

³ National Parks and Access to the Countryside Act 1949 s 80(2).

⁴ National Parks and Access to the Countryside Act 1949 s 80(3).

⁵ National Parks and Access to the Countryside Act 1949 s 80(3) (amended by the Local Government, Planning and Land Act 1980 Sch 3 para 9, Sch 34 Pt III).

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621. Suspension of public access to avoid exceptional fire risk.

If, on application to the county planning authority¹ by:

- 155 (1) any person interested in land² comprised in an access agreement or order³; or
- 156 (2) any other person appearing to that authority to have a sufficient interest in the matter,

the authority is satisfied that, due to exceptional weather conditions, public access to the land is likely to result in fires, the authority may direct that immunity from trespass does not apply to the land for a specified time⁴.

1 As to the meaning of 'county planning authority' see PARA 636 note 12. The reference in the National Parks and Access to the Countryside Act 1949 s 69(1) to the county planning authority is to be read, in relation to Wales, as a reference to the local planning authority: s 69(2) (added by the Local Government (Wales) Act 1994 Sch 6 para 15(2)). The National Parks and Access to the Countryside Act 1949 s 69 has effect as if the Broads Authority were a county planning authority: s 111A(4) (s 111A added by the Norfolk and Suffolk Broads Act 1988 Sch 3 para 2). As to the Broads Authority see PARA 531.

Where a national park authority is the local planning authority for a national park, the functions conferred on a county planning authority (or, in relation to Wales, a local planning authority) by the National Parks and Access to the Countryside Act 1949 s 69 are, as respects the whole or any part of the national park, functions of the national park authority and not of any other authority: see the Environment Act 1995 s 68(1), (2)(a); and PARA 644. As to national park authorities see PARA 526.

2 As to the meaning of 'land' see PARA 636 note 1.

3 As to access agreements and access orders see PARA 581. As to the making of access agreements see PARA 615; and as to the making of access orders see PARA 616.

4 National Parks and Access to the Countryside Act 1949 s 69(1) (s 69 substituted by the Local Government, Planning and Land Act 1980 Sch 3 para 7; and renumbered by the Local Government (Wales) Act 1994 Sch 6 para 15(2)).

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C. WORKS FOR PROVIDING MEANS OF ACCESS

622. Works in connection with means of access.

Where an access agreement or order¹ contains provisions for the improvement or repair of existing means of access to the land², for the construction of new means of access or for the maintenance of any means of access³, the local planning authority⁴ of the area in which the land is situate may agree with the owner⁵ or occupier as to the carrying out of the work⁶. Where, as a result of such agreement, the authority is not to do the work itself, it may defray the whole or a part of the cost involved⁷.

If the local planning authority in such a case is unable to make such an agreement⁸, or if the owner or occupier fails to carry out within a reasonable period any work which he has agreed to carry out⁹, then, after giving him not less than 14 days' notice of its intention to do so, the authority may take all necessary steps to carry out the work; and where the owner or occupier has failed to carry out work which he has agreed to carry out, and the agreement provided that the authority should contribute towards the cost of carrying out that work, it may recover from him the amount of any expenses, less the agreed contribution, which it reasonably incurs in carrying out the work itself¹⁰.

1 As to access agreements and access orders see PARA 581. As to the making of access agreements see PARA 615; and as to the making of access orders see PARA 616.

2 As to the meaning of 'means of access' see PARA 617 note 2. As to the meaning of 'land' see PARA 636 note 1.

3 As to the power to include these provisions in an access agreement or order see the National Parks and Access to the Countryside Act 1949 s 67(2); and PARA 617.

4 The functions of the local planning authority under the National Parks and Access to the Countryside Act 1949 s 67 are exercisable by the authority by which the access agreement or order was made or, where such an order was made by a Minister of the Crown, by the county planning authority: Local Government Act 1972 Sch 17 para 37. As to the meaning of 'county planning authority' see PARA 636 note 12. However, where a national park authority is the local planning authority for a national park, the Local Government Act 1972 Sch 17 para 37 does not apply in relation to any functions conferred by or under the National Parks and Access to the Countryside Act 1949 (see the Environment Act 1995 s 68(1)); and those functions are the functions of the national park authority (see s 68(2); and PARA 644). As to national park authorities see PARA 526.

5 As to the meaning of 'owner' see PARA 668 note 5.

6 National Parks and Access to the Countryside Act 1949 s 67(4).

7 National Parks and Access to the Countryside Act 1949 s 67(4).

8 National Parks and Access to the Countryside Act 1949 s 67(5)(a).

9 National Parks and Access to the Countryside Act 1949 s 67(5)(b).

10 National Parks and Access to the Countryside Act 1949 s 67(5).

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623. Procedure prior to work on land comprised in access order.

Where a local planning authority¹ proposes to carry out any work on land² comprised in an access order³, whether or not the work is specified in the order, it must give the owner⁴ and occupier of the land at least 14 days' notice of its intention, specifying the work to be done⁵.

Where the work specified in the notice is not work specified in the access order, then, before the expiration of the notice, the owner or occupier may serve notice of objection on the authority⁶. In this event, the authority must afford the objector an opportunity of being heard by a person appointed by it for the purpose, and must then determine either:

- 157 (1) not to carry out the work to which the objection relates⁷; or
- 158 (2) to carry it out either as originally proposed or with such modifications as the authority may determine⁸.

Notice of the determination must be served on the objector; and, if the authority determines to carry out the work, either as originally proposed or with or without modification, it may proceed with the work after the expiration of 14 days from the date on which notice of the determination was served on the objector⁹, unless in the meantime he serves notice of appeal¹⁰. A person aggrieved¹¹ by a determination may within 14 days from the service of the notice appeal to the Secretary of State or the Welsh Ministers¹²; and, in this event, the Secretary of State or the Welsh Ministers, after giving the appellant and the authority an opportunity of being heard by a person appointed by him or them, must either direct that the authority may carry out the work as originally proposed or subject to such modifications or conditions as the Secretary of State or the Welsh Ministers may think fit, or that the authority must not carry out the work¹³.

1 As to the meaning of 'local planning authority' see PARA 636 note 12.

2 As to the meaning of 'land' see PARA 636 note 1.

3 As to access orders see PARA 581. As to the making of access orders see PARA 616.

4 As to the meaning of 'owner' see PARA 668 note 5.

5 National Parks and Access to the Countryside Act 1949 s 75(2). Section 75 has effect as if the Countryside Act 1968 s 12(3), (4) (see PARA 646 note 11) formed part of the National Parks and Access to the Countryside Act 1949 s 13(1) (see PARA 646): see the Countryside Act 1968 s 12(6).

6 National Parks and Access to the Countryside Act 1949 s 75(3).

7 National Parks and Access to the Countryside Act 1949 s 75(4)(a).

8 National Parks and Access to the Countryside Act 1949 s 75(4)(b). A modification must not affect any land not affected by the original notice of intention to carry out the work: s 75(6).

9 National Parks and Access to the Countryside Act 1949 s 75(4).

10 National Parks and Access to the Countryside Act 1949 s 75(4) proviso.

11 As to persons aggrieved see **JUDICIAL REVIEW** vol 61 (2010) PARA 656.

12 The National Parks and Access to the Countryside Act 1949 refers to the Minister for Town and Country Planning, whose functions have been transferred to the Secretary of State or the Welsh Ministers: see PARA 519.

13 National Parks and Access to the Countryside Act 1949 s 75(5).

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624. Remedies where work is wrongfully carried out or access impeded.

If a person interested in any land¹ comprised in an access agreement or order² wrongfully carries out any work on the land which substantially reduces the area to which the public have access³, or impedes the public use of a means of access⁴ to the land in contravention of any restriction contained in the agreement or order⁵, the local planning authority⁶ for the area may serve a notice on him requiring him within a specified period to carry out such work as appears to the authority requisite for remedying the contravention, being work for restoring or re-opening any means of access to the land or for providing new means of access to it⁷. If the person served fails to carry out the work within the specified time, the authority may carry out the work itself, and recover from him the costs which it reasonably incurs⁸.

The person served may, at any time within the specified period, complain to a court of summary jurisdiction⁹ to the effect that:

- 159 (1) the specified period is too short¹⁰;
- 160 (2) the work specified, or some of it, is not necessary¹¹;
- 161 (3) there has been no contravention of the provisions or restriction in question¹²;
- or
- 162 (4) the work specified in the notice, or so much of it as is requisite for remedying the contravention, has been carried out¹³.

The court may either dismiss the complaint¹⁴, or, if satisfied that there are grounds for it, quash the notice as respects the whole or any part of the work¹⁵ or extend the time in which it is to be carried out¹⁶. The time between the making of the complaint and its determination or the determination of any appeal¹⁷ is disregarded in determining the period in which the work must be done¹⁸.

1 As to the meaning of 'land' see PARA 636 note 1.

2 As to access agreements and access orders see PARA 581. As to the making of access agreements see PARA 615; and as to the making of access orders see PARA 616.

3 The obligation not to carry out such work is imposed by the National Parks and Access to the Countryside Act 1949 s 66(1): see PARA 619.

4 As to the meaning of 'means of access' see PARA 617 note 2.

5 As to the power to include such restrictions in an access agreement or order see the National Parks and Access to the Countryside Act 1949 s 67(2)(c); and PARA 617.

6 The functions of the local planning authority under the National Parks and Access to the Countryside Act 1949 s 68 are exercisable by the authority by which the access agreement or order was made or, where such an order was made by a Minister of the Crown, by the county planning authority: Local Government Act 1972 Sch 17 para 37. As to the meaning of 'county planning authority' see PARA 636 note 12. However, where a national park authority is the local planning authority for a national park, the Local Government Act 1972 Sch 17 para 37 does not apply in relation to any functions conferred by or under the National Parks and Access to the Countryside Act 1949 (see the Environment Act 1995 s 68(1)); and those functions are the functions of the national park authority (see s 68(2); and PARA 644). As to national park authorities see PARA 526.

7 National Parks and Access to the Countryside Act 1949 s 68(1).

8 National Parks and Access to the Countryside Act 1949 s 68(2).

9 Any summons issued on the complaint must be served on the local planning authority: National Parks and Access to the Countryside Act 1949 s 68(4). The Magistrates' Courts Act 1980 applies to proceedings on the complaint: see the National Parks and Access to the Countryside Act 1949 s 68(6) (amended by the Courts Act 1971 Sch 9 Pt I). The National Parks and Access to the Countryside Act 1949 refers to the Summary Jurisdiction Acts. These Acts (as defined in the Interpretation Act 1889 s 13(7) (repealed)) were largely repealed and replaced by the Magistrates' Courts Act 1952 which is now consolidated in the Magistrates' Courts Act 1980: see **MAGISTRATES** vol 29(2) (Reissue) PARA 583.

10 National Parks and Access to the Countryside Act 1949 s 68(3)(a) (s 68(3) amended by the Courts Act 2003 Sch 8 para 86, Sch 10).

11 National Parks and Access to the Countryside Act 1949 s 68(3)(b) (as amended: see note 10).

12 National Parks and Access to the Countryside Act 1949 s 68(3)(c) (as amended: see note 10).

13 National Parks and Access to the Countryside Act 1949 s 68(3)(d) (as amended: see note 10).

14 National Parks and Access to the Countryside Act 1949 s 68(5).

15 National Parks and Access to the Countryside Act 1949 s 68(5)(b).

16 National Parks and Access to the Countryside Act 1949 s 68(5)(a).

17 Any person aggrieved by the decision of the court on a complaint may appeal to the Crown Court: National Parks and Access to the Countryside Act 1949 s 68(6) (amended by the Courts Act 1971 Sch 9 Pt I). As to persons aggrieved see **JUDICIAL REVIEW** vol 61 (2010) PARA 656.

18 National Parks and Access to the Countryside Act 1949 s 68(7).

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625. Works for the protection of the public against danger.

Where any land¹ in the area of a local planning authority² is comprised in an access agreement or order³, or has been acquired by the authority or by the Secretary of State or the Welsh Ministers⁴ for the purpose of public access⁵, the authority may take any steps and carry out any works, including the erection and maintenance of fences or notices, which appear to it necessary to protect the public from any source of danger on the land or on adjoining land⁶.

Where the land is comprised in an access agreement or order, the local planning authority⁷ may undertake to defray or contribute towards any expenditure incurred or to be incurred in relation to the land by any person having an interest in the land in taking these steps or carrying out these works or in erecting and maintaining notices to indicate the boundaries of the land⁸.

1 As to the meaning of 'land' see PARA 636 note 1.

2 As to the meaning of 'local planning authority' in this context see PARA 636 note 11.

3 As to access agreements and access orders see PARA 581. As to the making of access agreements see PARA 615; and as to the making of access orders see PARA 616.

4 The National Parks and Access to the Countryside Act 1949 refers to the Minister for Town and Country Planning, whose functions have been transferred to the Secretary of State or the Welsh Ministers: see PARA 519.

5 The powers of acquisition referred to in the text are those under the National Parks and Access to the Countryside Act 1949 ss 76, 77 (see PARAS 633-634).

6 National Parks and Access to the Countryside Act 1949 s 80(4).

7 The functions of the local planning authority under the National Parks and Access to the Countryside Act 1949 s 82 are exercisable by the authority by which the access agreement or order was made or, where such an order was made by a Minister of the Crown, by the county planning authority: Local Government Act 1972 Sch 17 para 37. As to the meaning of 'county planning authority' see PARA 636 note 12. However, where a national park authority is the local planning authority for a national park, the Local Government Act 1972 Sch 17 para 37 does not apply in relation to any functions conferred by or under the National Parks and Access to the Countryside Act 1949 (see the Environment Act 1995 s 68(1)); and those functions are the functions of the national park authority (see s 68(2); and PARA 644). As to national park authorities see PARA 526.

8 National Parks and Access to the Countryside Act 1949 s 82.

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D. MAPS AND NOTICES

626. Maps of land subject to public access.

Every local planning authority¹ having an area which comprises any land² subject to an access agreement or access order³ or any land acquired for the purpose of giving rights of access to the public⁴ must prepare and keep up to date a map on the prescribed scale⁵. The map is known as a 'rights of access map'⁶, and must define in the prescribed manner⁷:

- 163 (1) the land subject to the access agreement or order, or the land which has been acquired⁸;
- 164 (2) any part of any land subject to an access agreement or order, which in the authority's opinion is excepted land⁹, and which in the authority's opinion it is practicable to define on the map¹⁰; and
- 165 (3) any part of any land comprised in acquired land from which the public are excluded¹¹, and which in the authority's opinion it is practicable so to define¹².

The authority must have copies of the rights of access map available for inspection by the public at such places as the authority determines; and may display reproductions of the map at places where the public obtain access to the land to which the map relates¹³.

1 The functions conferred on a local planning authority by the National Parks and Access to the Countryside Act 1949 s 78 are exercisable by a county planning authority: see the Local Government Act 1972 s 184(2). Such an authority may require any other local planning authority having functions under the National Parks and Access to the Countryside Act 1949 Pt V (ss 59-83) within its area to give it such information as may facilitate the discharge of its functions under s 78(1): Local Government Act 1972 Sch 17 para 36. As to the meaning of 'county planning authority' see PARA 636 note 12. However, where a national park authority is the local planning authority for a national park, s 184 does not apply in relation to any functions conferred by or under the National Parks and Access to the Countryside Act 1949 (see the Environment Act 1995 s 68(1)); and those functions are the functions of the national park authority (see s 68(2); and PARA 644). As to national park authorities see PARA 526.

2 As to the meaning of 'land' see PARA 636 note 1.

3 As to access agreements and access orders see PARA 581. As to the making of access agreements see PARA 615; and as to the making of access orders see PARA 616.

4 Land acquired under the National Parks and Access to the Countryside Act 1949 s 76 or s 77 (see PARA 633-634).

5 National Parks and Access to the Countryside Act 1949 s 78(1). The scale must be not less than 2.5 inches to 1 mile: National Parks and Access to the Countryside Regulations 1950, SI 1950/1066, reg 11.

6 National Parks and Access to the Countryside Regulations 1950, SI 1950/1066, reg 10(c).

7 See the National Parks and Access to the Countryside Regulations 1950, SI 1950/1066, regs 13, 14.

8 National Parks and Access to the Countryside Act 1949 s 78(1)(i).

9 As to the meaning of 'excepted land' see PARA 584.

10 National Parks and Access to the Countryside Act 1949 s 78(1)(ii).

11 le for the purpose of avoiding danger to the public or to persons employed on the land, or because it is excepted land, or for any other reason: see the National Parks and Access to the Countryside Act 1949 s 78(1)(iii).

12 National Parks and Access to the Countryside Act 1949 s 78(1)(iii).

13 National Parks and Access to the Countryside Act 1949 s 78(2)(a). A local planning authority may contribute towards expenditure incurred by a person in displaying such reproductions and notices specifying restrictions on access to the land (see PARA 627): see the Countryside Act 1968 s 20. Section 20 has effect as if the Broads Authority were a local planning authority: s 47A(2) (s 47A added by the Norfolk and Suffolk Broads Act 1988 Sch 3 para 6; and amended by the Environment Act 1995 Sch 24). As to the Broads Authority see PARA 531. The functions of the local planning authority under the Countryside Act 1968 s 20 are exercisable by the authority by which the access agreement or order was made or, where such an order was made by a Minister of the Crown, by the county planning authority: Local Government Act 1972 Sch 17 para 37. As to the meaning of 'county planning authority' see PARA 636 note 12. However, where a national park authority is the local planning authority for a national park, Sch 17 para 37 does not apply in relation to any functions conferred by or under the National Parks and Access to the Countryside Act 1949 (see the Environment Act 1995 s 68(1)); and those functions are the functions of the national park authority (see s 68(2); and PARA 644).

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627. Notices.

If it thinks fit, a local planning authority¹ may display notices at places where the public obtain access to any land² to which a rights of access map³ relates, specifying any restrictions⁴ on access to the land or any part of it⁵. A local planning authority⁶ may erect and maintain notices indicating the boundaries of land comprised in an access agreement or order⁷ and of any excepted land⁸. When land is subject to an access agreement or order the authority may defray, or contribute towards, or undertake to defray or contribute towards, the expenditure involved in erecting and maintaining boundary notices⁹.

1 As to the local planning authority see PARA 626 note 1.

2 As to the meaning of 'land' see PARA 636 note 1.

3 As to rights of access maps see PARA 626.

4 Eg restrictions imposed under the National Parks and Access to the Countryside Act 1949 s 60(3) (see PARA 583), or the general restrictions referred to in s 60, Sch 2 (see PARA 583 note 9), or restrictions imposed under byelaws (see PARA 672).

5 National Parks and Access to the Countryside Act 1949 s 78(2)(b).

6 The functions of the local planning authority under the National Parks and Access to the Countryside Act 1949 ss 81, 82 are exercisable by the authority by which the access agreement or order was made or, where such an order was made by a Minister of the Crown, by the county planning authority: Local Government Act 1972 Sch 17 para 37. As to the meaning of 'county planning authority' see PARA 636 note 12. However, where a national park authority is the local planning authority for a national park, Sch 17 para 37 does not apply in relation to any functions conferred by or under the National Parks and Access to the Countryside Act 1949 (see the Environment Act 1995 s 68(1)); and those functions are the functions of the national park authority (see s 68(2); and PARA 644). As to national park authorities see PARA 526.

7 As to access agreements and access orders see PARA 581. As to the making of access agreements see PARA 615; and as to the making of access orders see PARA 616.

8 National Parks and Access to the Countryside Act 1949 s 81. As to the meaning of 'excepted land' see PARA 584.

9 National Parks and Access to the Countryside Act 1949 s 82. See note 6.

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(2) COASTAL ACCESS

628. The coastal access duty: the English coastal route and access to the coastal margin.

The Marine and Coastal Access Act 2009¹ imposes a duty (known as the 'coastal access duty'²) on Natural England³ and the Secretary of State⁴ to exercise the relevant functions⁵ in order to secure the following two objectives⁶.

The first objective is that there is a route (the 'English coastal route') for the whole of the English coast⁷ which: (1) consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry⁸; and (2) (except to the extent that it is completed by ferry) passes over land which is accessible to the public⁹.

The second objective is that, in association with that route, a margin of land along the length of the English coast is accessible to the public¹⁰ for the purposes of its enjoyment by them in conjunction with that route or otherwise, except to the extent that the margin of land is relevant excepted land¹¹.

In discharging the coastal access duty, Natural England and the Secretary of State must comply with the following requirements¹². They must have regard to: (a) the safety and convenience of those using the English coastal route¹³; (b) the desirability of that route adhering to the periphery of the coast and providing views of the sea¹⁴; and (c) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum¹⁵. They must aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land¹⁶.

1 The provisions of the Marine and Coastal Access Act 2009 Pt 9 (ss 296-310) came into force at the end of the period of two months beginning with the day on which the Act was passed: s 324(2)(d). The Act was passed on 12 November 2009, and therefore these provisions came into force on 12 January 2010. These provisions apply to England; power is given to the National Assembly of Wales to legislate on matters relating to a coastal route and access to relevant land in Wales: see s 310 (which amends the Government of Wales Act 2006 Sch 5 Pt 1, as to which see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**). As to the application of these provisions to the Isles of Scilly see the Marine and Coastal Access Act 2009 s 307. As to the application of these provisions to Crown land see s 308.

2 Marine and Coastal Access Act 2009 s 296(4)(a).

3 As to Natural England see PARA 523.

4 As to the Secretary of State see PARA 519.

5 'Relevant functions' means:

70 (1) in relation to Natural England, its functions under Pt 9, the National Parks and Access to the Countryside Act 1949 Pt IV (ss 50A-57) (long-distance routes: see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 696 et seq) and the Countryside and Rights of Way Act 2000 Pt I (ss 1-46) (access to the countryside: see PARA 580 et seq), and such other functions as it considers it appropriate to exercise for the purpose of securing the objectives mentioned in the text (Marine and Coastal Access Act 2009 s 296(8)(a));

71 (2) in relation to the Secretary of State, his functions under Pt 9, the National Parks and Access to the Countryside Act 1949 Pt IV and the Countryside and Rights of Way Act 2000 Pt I, and such

of his other functions as he considers it appropriate to exercise for the purpose of securing the objectives mentioned in the text (Marine and Coastal Access Act 2009 s 296(8)(b)).

6 Marine and Coastal Access Act 2009 s 296(1). This duty is to be discharged in such stages and within such period as appear to Natural England and the Secretary of State to be appropriate: s 296(4)(b).

7 For these purposes, 'English coast' means the coast of England adjacent to the sea, including the coast of any island (in the sea) comprised in England (other than an excluded island): Marine and Coastal Access Act 2009 s 300(1). An island is 'excluded' if it is neither: (1) an accessible island (s 300(2)(a)); nor (2) an island specified by the Secretary of State by order for these purposes (s 300(2)(b)). An island is 'accessible' if it is possible to walk to the island from the mainland of England, or from another island within s 300(2)(a) or (b), across the foreshore or by means of a bridge, tunnel or causeway (s 300(3)); and, for the purposes of s 300(3), it is possible to walk to an island even if it is possible to do so at certain times, or during certain periods, only (s 300(4)). An island may be specified by an order under s 300(2)(b) only if the Secretary of State is satisfied that the coast of the island is of sufficient length to enable the establishment of one or more long-distance routes along its length capable of affording the public an extensive journey on foot: s 300(5). For the purposes of the objective in s 296(2) (ie the first objective, relating to the English coastal route), the means of access to an accessible island is (to the extent that it would not otherwise be the case) to be regarded as part of the English coast: s 300(6). The provisions of s 300 are subject to s 302 (Isles of Scilly: see note 1): s 300(7).

Where the continuity of any part of the English coast is interrupted by a river, Natural England may exercise its functions as if the references in the coastal access provisions to the sea included the relevant upstream waters of the river: s 301(1), (2). For this purpose, 'relevant upstream waters', in relation to a river, means: (a) the waters from the seaward limit of the estuarial waters of the river upstream to the first public foot crossing (s 301(3)(a)); or (b) if Natural England so decides, the waters from the seaward limit of the estuarial waters of the river upstream to such limit, downstream of the first public foot crossing, as may be specified by it (s 301(3)(b)). 'Public foot crossing', in relation to a river, means a bridge over which, or tunnel through which, there is a public right of way, or a public right of access, by virtue of which the public are able to cross the river on foot: s 301(8). When exercising any power conferred by s 301(2) or (3), Natural England must have regard to the following matters (in addition to the matters mentioned in s 297(2): see heads (a)-(c) in the text): (i) the nature of the land which would, for the purposes of Pt 9, become part of the coast of England if Natural England exercised the power in s 301(2) in respect of the relevant upstream waters for the limit under consideration; (ii) the topography of the shoreline adjacent to those waters; (iii) the width of the river upstream to that limit; (iv) the recreational benefit to the public of the coastal access duty being extended to apply in relation to the coast adjacent to those waters; (v) the extent to which the land bordering those waters would, if it were coastal margin, be excepted land; (vi) whether it is desirable to continue the English coastal route to a particular physical feature (whether of the landscape or otherwise) or viewpoint; (vii) the existence of a ferry by which the public may cross the river: s 301(4). For these purposes, 'excepted land' has the same meaning as in the Countryside and Rights of Way Act 2000 Pt I (see PARA 584): Marine and Coastal Access Act 2009 s 301(8). Anything done pursuant to s 301(2) (including any decision under s 301(3)(b): see head (b) above) is to be regarded as done pursuant to, and for the purpose of discharging, the coastal access duty: s 301(5). The provisions of s 301(1)-(5) apply in relation to the Secretary of State as they apply in relation to Natural England: s 301(6). A decision by Natural England to exercise a power conferred by s 301(2) or (3) in relation to a river: (A) is without prejudice to any decision by the Secretary of State (by virtue of s 301(6)) as to whether or not to exercise such a power in relation to the river; and (B) does not affect the requirements of s 301(4) (as they apply by virtue of s 301(6)) or of s 297(2), (3) (see the text and notes 13-16), in relation to such a decision by the Secretary of State: s 301(7). For the purposes of s 301, 'coastal access provisions' means Pt 9 (other than s 301) and the National Parks and Access to the Countryside Act 1949 ss 55A-55J (see PARA 630; and **HIGHWAYS, STREETS AND BRIDGES**): Marine and Coastal Access Act 2009 s 301(8).

8 For the purposes of the coastal access duty, a person is to be regarded as enabled to make a journey by ferry even if that journey can be made at certain times, or during certain periods, only: Marine and Coastal Access Act 2009 s 296(7).

9 Marine and Coastal Access Act 2009 s 296(2).

10 For the purposes of the Marine and Coastal Access Act 2009 s 296, land is accessible to the public if it is: (1) land which is available to the public for the purposes of open-air recreation, by virtue of provision made under the Countryside and Rights of Way Act 2000 s 3A (see PARA 582) and subject to any exclusions or restrictions imposed by or under Pt I; (2) land in England which, for the purposes of s 1(1) (see PARA 580), is treated by s 15(1) (see PARA 580) as being accessible to the public apart from the Countryside and Rights of Way Act 2000; or (3) excepted land in England which is accessible to the public by virtue of any enactment or rule of law (other than a military lands byelaw): Marine and Coastal Access Act 2009 s 296(5). For these purposes, 'excepted land' has the same meaning as in the Countryside and Rights of Way Act 2000 Pt I (see PARA 584): Marine and Coastal Access Act 2009 s 296(8). 'Military lands byelaw' means a byelaw under the Military Lands Act 1892 s 14 or the Military Lands Act 1900 s 2 (see **ARMED FORCES** vol 2(2) (Reissue) PARA 124): Marine and Coastal Access Act 2009 s 296(8).

11 Marine and Coastal Access Act 2009 s 296(3). 'Relevant excepted land' means excepted land other than land within s 296(5)(c) (see note 10 head (3)): s 296(8). In relation to voluntarily dedicated coastal access land certain otherwise excepted land is to be treated as if it were not excepted land: see the Countryside and Rights of Way Act 2000 s 16(2C); and PARA 580 note 8.

Nothing in the Marine and Coastal Access Act 2009 s 296 requires Natural England or the Secretary of State, in discharging the coastal access duty so far as it relates to the second objective mentioned in the text, to exercise functions so as to secure that any land becomes land within s 296(5)(b) or (c): s 296(6).

12 Marine and Coastal Access Act 2009 s 297(1).

13 Marine and Coastal Access Act 2009 s 297(2)(a).

14 Marine and Coastal Access Act 2009 s 297(2)(b).

15 Marine and Coastal Access Act 2009 s 297(2)(c).

16 Marine and Coastal Access Act 2009 s 297(3). For this purpose, a person has a relevant interest in land if the person: (1) holds an estate in fee simple absolute in possession in the land; (2) holds a term of years absolute in the land; or (3) is in lawful occupation of the land: s 297(4).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/4. ACCESS TO THE COUNTRYSIDE/(2) COASTAL ACCESS/629. The coastal access scheme.

629. The coastal access scheme.

Natural England¹ must: (1) prepare a scheme setting out the approach it will take when discharging the coastal access duty²; and (2) submit the scheme to the Secretary of State³. The Secretary of State may: (a) approve the scheme, with or without modifications⁴; or (b) reject the scheme and give Natural England a notice requiring it to prepare and submit a new scheme⁵. Natural England may, with the approval of the Secretary of State, revise a scheme that has been approved⁶. Before preparing or revising a scheme, Natural England must consult such persons as it considers appropriate⁷.

The Secretary of State must lay before Parliament: (i) a copy of the approved scheme; and (ii) where that scheme is revised, a copy of the revised scheme⁸. Natural England must, as soon as reasonably practicable, publish in such manner as it considers appropriate: (A) the scheme approved by the Secretary of State; and (B) where that scheme is revised, the revised scheme⁹.

In discharging the coastal access duty, Natural England must act in accordance with the approved scheme (or, where that scheme has been revised, the revised scheme)¹⁰.

Where a scheme has been approved, Natural England may, from time to time, review the scheme (as revised from time to time)¹¹. At least one review must be completed within the period of three years beginning with the day on which a scheme is first approved¹². Natural England must publish a report of each review as soon as reasonably practicable after the review is completed¹³.

1 As to Natural England see PARA 523.

2 Marine and Coastal Access Act 2009 s 298(1)(a). As to the coastal access duty see PARA 628.

3 Marine and Coastal Access Act 2009 s 298(1)(b). The scheme must be submitted to the Secretary of State within the period of 12 months beginning with the day on which s 298 comes into force (see PARA 628 note 1) or, in a case within s 298(2)(b) (see head (b) in the text), within the period specified in the notice: s 298(3). As to the Secretary of State see PARA 519.

4 Marine and Coastal Access Act 2009 s 298(2)(a).

5 Marine and Coastal Access Act 2009 s 298(2)(b).

6 Marine and Coastal Access Act 2009 s 298(4).

7 Marine and Coastal Access Act 2009 s 298(7).

8 Marine and Coastal Access Act 2009 s 298(6).

9 Marine and Coastal Access Act 2009 s 298(8).

10 Marine and Coastal Access Act 2009 s 298(9). The approved scheme (and any revised scheme) must set out the approach Natural England will take when deciding, for the purposes of the National Parks and Access to the Countryside Act 1949 s 55A(4) (see PARA 630; and **HIGHWAYS, STREETS AND BRIDGES**), whether it would be appropriate for an access authority to carry out any preliminary activity (within the meaning of the National Parks and Access to the Countryside Act 1949 s 55A(3): see PARA 630; and **HIGHWAYS, STREETS AND BRIDGES**): Marine and Coastal Access Act 2009 s 298(5). For these purposes, 'access authority' has the same meaning as in the Countryside and Rights of Way Act 2000 Pt I (ss 1-46) (see PARA 590): Marine and Coastal Access Act 2009 s 304. Until such time as there is an approved scheme, Natural England may not prepare or submit a report under the National Parks and Access to the Countryside Act 1949 s 51 or s 55 (report containing proposals for long-distance routes: see PARA 630; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARAS 696, 700).

pursuant to the coastal access duty (Marine and Coastal Access Act 2009 s 298(10)), but this does not prevent Natural England from surveying any land in connection with the preparation of such a report (s 298(11)).

- 11 Marine and Coastal Access Act 2009 s 299(1).
- 12 Marine and Coastal Access Act 2009 s 299(2).
- 13 Marine and Coastal Access Act 2009 s 299(3).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/4. ACCESS TO THE COUNTRYSIDE/(2) COASTAL ACCESS/630. Implementation of the coastal access duty.

630. Implementation of the coastal access duty.

The Marine and Coastal Access Act 2009 makes provision for the implementation of the coastal access duty¹ by adding provisions into the National Parks and Access to the Countryside Act 1949², which supplement the existing provisions relating to long-distance routes³. These provisions enable Natural England⁴ to prepare and submit a report⁵ containing proposals for a coastal route⁶. They make provision for areas subject to erosion⁷, alternative routes⁸, temporary diversions⁹, and ferries¹⁰. They also provide that the proposals set out in a report may include provision for a coastal margin¹¹. Provision is made in relation to the procedure to be followed when a report is submitted, and in relation to the approval of proposals¹²; and provision is also made for variation of approved proposals¹³. There is also special provision for the establishment and maintenance of the English coastal route¹⁴.

1 As to the coastal access duty see PARA 628.

2 The National Parks and Access to the Countryside Act 1949 ss 55A-55J and Sch 1A are added by the Marine and Coastal Access Act 2009 s 302, Sch 19. See further the text and notes 5-13; and **HIGHWAYS, STREETS AND BRIDGES**.

3 As to the existing provisions relating to long-distance routes see the National Parks and Access to the Countryside Act 1949 ss 50A-55; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 696 et seq.

4 As to Natural England see PARA 523.

5 See under the National Parks and Access to the Countryside Act 1949 s 51: see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 696. As to coastal access reports see Sch 1A; and **HIGHWAYS, STREETS AND BRIDGES**.

6 See the National Parks and Access to the Countryside Act 1949 s 55A; and **HIGHWAYS, STREETS AND BRIDGES**. The first objective of the coastal access duty is that there should be a long-distance coastal route: see PARA 628. As to the coastal route see further **HIGHWAYS, STREETS AND BRIDGES**. As to restrictions on the liabilities of Natural England and the Secretary of State see the Marine and Coastal Access Act 2009 s 305; and **HIGHWAYS, STREETS AND BRIDGES**. As to the Secretary of State see PARA 519.

7 See the National Parks and Access to the Countryside Act 1949 s 55B; and **HIGHWAYS, STREETS AND BRIDGES**.

8 See the National Parks and Access to the Countryside Act 1949 s 55C; and **HIGHWAYS, STREETS AND BRIDGES**.

9 See the National Parks and Access to the Countryside Act 1949 s 55I; and **HIGHWAYS, STREETS AND BRIDGES**.

10 See the National Parks and Access to the Countryside Act 1949 s 55G; and **HIGHWAYS, STREETS AND BRIDGES**.

11 See the National Parks and Access to the Countryside Act 1949 s 55D; and **HIGHWAYS, STREETS AND BRIDGES**. The second objective of the coastal access duty is that there should be a coastal margin accessible to the public: see PARA 628. As to directions excluding or restricting rights of access see s 55F; PARA 594 et seq; and **HIGHWAYS, STREETS AND BRIDGES**.

12 See the National Parks and Access to the Countryside Act 1949 s 55E, Sch 1A; and **HIGHWAYS, STREETS AND BRIDGES**.

13 See the National Parks and Access to the Countryside Act 1949 s 55H; and **HIGHWAYS, STREETS AND BRIDGES**.

- 14 See the Marine and Coastal Access Act 2009 s 304, Sch 20; and **HIGHWAYS, STREETS AND BRIDGES**.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/4. ACCESS TO THE COUNTRYSIDE/(3) ACCESS TO SET-ASIDE LAND AND TO STEWARDSHIP LAND/631. Access to set-aside land and countryside access aid.

(3) ACCESS TO SET-ASIDE LAND AND TO STEWARDSHIP LAND

631. Access to set-aside land and countryside access aid.

Provision was made for the payment of aid¹ to certain owners or tenants of land² who undertook: (1) to allow the public to have access for a five-year period (the 'access period'³) to an area of set-aside land⁴ (the 'access area'⁵) for the purposes of quiet recreation⁶; and (2) to manage that land in accordance with the statutory requirements⁷. However, the scheme is now closed: no payment for aid may be made in relation to land in England in respect of any access period beginning in the year 2000 or any subsequent year⁸, and no payment for aid in relation to land in Wales may be made in respect of an applications received after 11 May 1999⁹.

1 See the Countryside Access Regulations 1994, SI 1994/2349, reg 3 (substituted by SI 1996/3111). As to applications for aid see the Countryside Access Regulations 1994, SI 1994/2349, reg 5; as to restrictions on the acceptance of applications see reg 6 (amended by SI 1999/416); as to the amounts and payment of aid see the Countryside Access Regulations 1994, SI 1994/2349, reg 8 (amended by SI 1996/3111; and by virtue of SI 1999/416); and as to claims for aid see the Countryside Access Regulations 1994, SI 1994/2349, reg 9. As to the recovery of interest on wrongful payments of aid see reg 11A (added by SI 1996/3111). Amounts to be recovered are recoverable as a debt: see the Countryside Access Regulations 1994, SI 1994/2349, reg 11B (added by SI 1996/3111).

2 As to where there is a change of occupation see the Countryside Access Regulations 1994, SI 1994/2349, reg 7 (amended by SI 1996/3111).

3 'Access period' means the period of five consecutive years commencing on 15 January of the year in which that date first occurs after the date of acceptance of an application: see the Countryside Access Regulations 1994, SI 1994/2349, reg 2(1).

4 As to set-aside land see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 787 et seq.

5 'Access area' means the area of land in relation to which the beneficiary assumes access obligations under the provisions of the Countryside Access Regulations 1994, SI 1994/2349: reg 2(1). The access area must be a continuous area of land consisting of: (1) a strip or strips of land 10 metres wide (an 'access route'); (2) a whole field or whole fields; (3) a part of a field or parts of fields; or (4) any combination of heads (1)-(3): Countryside Access Regulations 1994, SI 1994/2349, reg 4.

6 'Quiet recreation' includes walking, viewing and picnicking: Countryside Access Regulations 1994, SI 1994/2349, reg 2(1).

7 As to the statutory requirements see the Countryside Access Regulations 1994, SI 1994/2349, Schedule. As to the obligation to permit entry and inspection see reg 10. As to the withholding or recovery of aid where a person made false statements or failed to comply with any obligations or requirements see reg 11 (substituted by SI 1996/3111). As to the offence of knowingly or recklessly making a false statement see the Countryside Access Regulations 1994, SI 1994/2349, reg 12.

8 See the Countryside Access Regulations 1994, SI 1994/2349, reg 14 (added by SI 1999/2197).

9 See the Countryside Access Regulations 1994, SI 1994/2349, reg 13 (added by SI 1999/1174).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/4. ACCESS TO THE COUNTRYSIDE/(3) ACCESS TO SET-ASIDE LAND AND TO STEWARDSHIP LAND/632. Access to stewardship land.

632. Access to stewardship land.

Under the Higher Level Environmental Stewardship Scheme¹ payments may be made to farmers for permitting public access to land in the scheme. In addition to basic requirements relating to public rights of way, the farmer must allow any informal public access² on the land to continue; and if the agreement provides for payments for access there must be public liability insurance adequate for the type of access provided³.

1 See the Environmental Stewardship (England) Regulations 2005, SI 2005/621; PARA 760 et seq; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 811. The Environmental Stewardship Scheme has replaced the Countryside Stewardship Scheme: see PARAS 759-760.

2 Ie any such access that is not by virtue of any existing legal right.

3 See Natural England's HLS Handbook (2nd Edition, 2008) Section 5.3.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/4. ACCESS TO THE COUNTRYSIDE/(4) ACQUISITION OF LAND FOR ACCESS/633. Acquisition by local planning authority.

(4) ACQUISITION OF LAND FOR ACCESS

633. Acquisition by local planning authority.

A local planning authority¹ may acquire compulsorily² any open country³ in its area, other than excepted land⁴, if it appears to the authority that it is requisite that the public should have access to such land for open-air recreation, and that in the circumstances it is expedient that access should be secured by the acquisition of the land⁵. The authority may also acquire compulsorily any land surrounded by or contiguous or adjacent to such land if it appears to the authority that the proper carrying out of its purpose would be substantially prejudiced unless this further land was acquired⁶.

Where land has been acquired by a local planning authority under these powers⁷, it becomes the authority's duty to manage the land so as to give the public access for open-air recreation to as much of it as is practicable, having regard to the nature of the different parts of the land, any dangers to which the public or any persons employed on the land might be exposed, and all other relevant circumstances⁸. The authority may provide convenient means of access⁹ to the land, and carry out such other works as it considers requisite for achieving the purpose for which the land was acquired¹⁰.

1 As to the meaning of 'local planning authority' see PARA 636 note 12.

2 The power of compulsory acquisition is exercisable by the local authority on authorisation in any particular case by the Secretary of State or the Welsh Ministers: see the National Parks and Access to the Countryside Act 1949 s 103(1); and PARA 668. Duly authorised persons may enter on land to be compulsorily acquired for the purpose of surveying it: see the National Parks and Access to the Countryside Act 1949 s 108; and PARA 669. As to the Secretary of State and the Welsh Ministers see PARA 519.

3 As the meaning of 'open country' see PARA 582. The powers of acquisition apply also in the case of Crown land, subject to the modification that Crown land may not be acquired except with the consent of the appropriate authority: see the National Parks and Access to the Countryside Act 1949 s 101(6)(b), (11); and PARA 639. Land forming part of Epping Forest or Burnham Beeches, or inalienably held by the National Trust, is, however, outside the powers of acquisition because Pt V (ss 59-83) does not apply to such land: see ss 112, 113.

4 For these purposes, 'excepted land' includes, in relation to any compulsory purchase, land such that if an access agreement or order had been made at the time when the compulsory purchase order was confirmed the land would have been excepted land (as defined in PARA 584) for the purpose of that agreement or order by reason of being used at that time as a park, garden or pleasure ground: National Parks and Access to the Countryside Act 1949 s 76(1) proviso. As to access agreements and access orders see PARA 581. As to the making of access agreements see PARA 615; and as to the making of access orders see PARA 616.

5 National Parks and Access to the Countryside Act 1949 s 76(1). As to the meaning of 'open-air recreation' see PARA 581 note 1. As to the meaning of 'land' see PARA 636 note 1.

6 See the National Parks and Access to the Countryside Act 1949 s 76(2).

7 ie under the National Parks and Access to the Countryside Act 1949 s 76(1), (2).

8 National Parks and Access to the Countryside Act 1949 s 76(4).

9 For these purposes, 'means of access' includes any means of access, whether private or public, for vehicles or for foot passengers, and includes a street: see the Town and Country Planning Act 1990 s 336(1); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 219 (definition applied by the National Parks and

Access to the Countryside Act 1949 s 114(1) (which refers to the Town and Country Planning Act 1947 (repealed)); and the Planning (Consequential Provisions) Act 1990 s 2(4)).

10 See the National Parks and Access to the Countryside Act 1949 s 76(3).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/4. ACCESS TO THE COUNTRYSIDE/(4) ACQUISITION OF LAND FOR ACCESS/634. Acquisition by the Secretary of State or the Welsh Ministers.

634. Acquisition by the Secretary of State or the Welsh Ministers.

Where it appears to the Secretary of State or the Welsh Ministers¹ that it is requisite that the public should have access for open-air recreation² to any open country³ in a national park⁴, which is not excepted land⁵, and that it is expedient that such access should be secured by means of the acquisition of the land by him or them, he or they may acquire the land by agreement, whether by way of purchase, lease or exchange, or acquire it compulsorily⁶. The Secretary of State or the Welsh Ministers may also acquire in the same way any land surrounded by or contiguous or adjacent to such land if it appears that the proper carrying out of his or their purpose would be substantially prejudiced unless this further land was acquired⁷.

Unless in any particular case it is otherwise determined by the Secretary of State or the Welsh Ministers, any land acquired under these powers⁸ must be transferred to other persons upon trusts or subject to conditions which appear expedient for securing public access for open-air recreation to as much of the land as appears practicable, having regard to the nature of the different parts of the land, any dangers to which the public or persons employed on the land might be exposed and all other relevant circumstances⁹. The arrangements for the transfer of the land may provide for the Secretary of State or Welsh Ministers defraying or contributing towards the cost of managing the land in accordance with the trusts or conditions upon which it was transferred¹⁰.

If the land is retained by the Secretary of State or the Welsh Ministers, the cost of managing it may be defrayed so as to secure public access¹¹; and work may be carried out as considered requisite for providing convenient means of access to the land or otherwise for securing public access¹². If the land is transferred to other persons, the Secretary of State or the Welsh Ministers may arrange for these works to be carried out by such other persons¹³.

1 The National Parks and Access to the Countryside Act 1949 refers to the Minister of Town and Country Planning, whose functions have been transferred to the Secretary of State or the Welsh Ministers: see PARA 519.

2 As to the meaning of 'open-air recreation' see PARA 581 note 1.

3 As to the meaning of 'open country' see PARA 582.

4 As to national parks see PARA 636 et seq.

5 For these purposes, 'excepted land' includes, in relation to any compulsory purchase, land such that if an access agreement or order had been made when the compulsory purchase order was confirmed, the land would have been excepted land by virtue of the National Parks and Access to the Countryside Act 1949 s 60(5)(d) (see PARA 584 head (4)): s 77(1). Land forming part of Epping Forest or Burnham Beeches, or held inalienably by the National Trust is, however, outside the power of acquisition: see ss 112, 113.

6 National Parks and Access to the Countryside Act 1949 s 77(1). As to compulsory acquisition by the Secretary of State or the Welsh Ministers see further PARA 668 text and note 10.

As to the requirement for Treasury consent see s 77(1). As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

7 National Parks and Access to the Countryside Act 1949 s 76(2) (applied by s 77(2)). As to the meaning of 'land' see PARA 636 note 1.

8 I.e. under the National Parks and Access to the Countryside Act 1949 s 77(1), (2) (see the text and notes 1-7).

- 9 National Parks and Access to the Countryside Act 1949 ss 14(2), 76(4) (applied by s 77(3)).
- 10 National Parks and Access to the Countryside Act 1949 s 14(3) (applied by s 77(3)). As to the requirement for Treasury consent see s 14(3).
- 11 National Parks and Access to the Countryside Act 1949 s 14(4) (applied by s 77(3)).
- 12 National Parks and Access to the Countryside Act 1949 s 77(5). As to the meaning of 'means of access' see PARA 633 note 9.
- 13 National Parks and Access to the Countryside Act 1949 s 77(5) (amended by the Local Government, Planning and Land Act 1980 Sch 23 para 2, Sch 34 Pt XII).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/4. ACCESS TO THE COUNTRYSIDE/(5) ACCESS FORUMS/635. Establishment and function.

(5) ACCESS FORUMS

635. Establishment and function.

The appointing authority¹ for any area must in accordance with regulations² establish for that area, or for each part of it, an advisory body to be known as a local access forum³. A local access forum consists of members appointed by the appointing authority⁴. It is the function of a local access forum, as respects the area for which it is established, to advise:

- 166 (1) the appointing authority⁵;
- 167 (2) any body exercising functions in relation to access to the countryside⁶ in relation to land in that area⁷;
- 168 (3) if the appointing authority is a national park authority, the local highway authority for any part of that area⁸; and
- 169 (4) such other bodies as may be prescribed⁹,

as to the improvement of public access to land in that area for the purposes of open-air recreation¹⁰ and the enjoyment of the area, and as to such other matters as may be prescribed¹¹. The bodies mentioned in heads (1) to (4) must have regard, in carrying out their functions, to any relevant advice given to them by a local access forum¹².

In carrying out its functions, a local access forum must have regard to the needs of land management¹³, the desirability of conserving the natural beauty of the area for which it is established, including the flora, fauna and geological and physiographical features of the area¹⁴, and guidance given from time to time by the Secretary of State, in relation to England, or the Welsh Ministers, in relation to Wales¹⁵.

1 'Appointing authority', for these purposes, means: (1) the local highway authority for its area, except any part of it in a national park; and (2) the national park authority for a national park: see the Countryside and Rights of Way Act 2000 s 94(2). 'Local highway authority' has the same meaning as in the Highways Act 1980 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 56): Countryside and Rights of Way Act 2000 s 94(10).

2 'Regulations' means regulations made, as respects England, by the Secretary of State, and, as respects Wales, by the Welsh Ministers: Countryside and Rights of Way Act 2000 s 94(10). Regulations under s 94 may include such supplementary or incidental provision as appears to the Secretary of State or the Welsh Ministers (as the case may be) to be necessary or expedient: s 95(5). As to such regulations see the Local Access Forums (England) Regulations 2007, SI 2007/268; and the Countryside Access (Local Access Forums) (Wales) Regulations 2001, SI 2001/4002.

3 Countryside and Rights of Way Act 2000 s 94(1). This does not apply to the council of a London borough or to any part of its area unless the council so resolves: Countryside and Rights of Way Act 2000 s 94(7). As to London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 30, 35 et seq. The Secretary of State, as respects England, or the Welsh Ministers, as respects Wales, if satisfied that no local access forum is required for any area or part of any area, may direct that s 94(1) is not to apply in relation to that area or part: s 94(8). Before giving such a direction as respects an area or part of an area, the Secretary of State or the Welsh Ministers must consult the appointing authority for the area and the appropriate countryside body: s 94(9). As to the meaning of 'appropriate countryside body' see PARA 580 note 2. As to the Secretary of State and the Welsh Ministers see PARA 519.

For the purposes of s 94, the Broads are to be treated as a national park and the Broads Authority as a national park authority: s 95(6). As to the meaning of 'the Broads' see **WATER AND WATERWAYS** vol 101 (2009) PARA 735 note 2. As to the Broads Authority see PARA 531.

4 Countryside and Rights of Way Act 2000 s 94(3). Such appointments must be made in accordance with regulations: see s 94(3). Regulations under s 94 may in particular include provision: (1) as to the appointment as members of a local access forum of persons appearing to the appointing authority to be representative of persons of any specified description or of any specified body; (2) as to the establishment by appointing authorities of joint local access forums: s 95(1); and see the Local Access Forums (England) Regulations 2007, SI 2007/268, reg 3; and the Countryside Access (Local Access Forums) (Wales) Regulations 2001, SI 2001/4002, reg 4. The regulations must provide for the appointment of persons appearing to the appointing authority to be representative of: (a) users of local rights of way or the right conferred by s 2(1) (see PARA 583) (Countryside and Rights of Way Act 2000 s 95(2)(a)); (b) owners and occupiers of access land or land over which local rights of way subsist (s 95(2)(b)); (c) any other interests especially relevant to the authority's area (s 95(2)(c)). As to such provision see the Local Access Forums (England) Regulations 2007, SI 2007/268, reg 3; and the Countryside Access (Local Access Forums) (Wales) Regulations 2001, SI 2001/4002, reg 4. As to the meaning of 'access land' see PARA 580. 'Local rights of way' has the meaning given by the Countryside and Rights of Way Act 2000 s 60(5) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 618), but as if the references there to a local highway authority and its area were references to an appointing authority and its area: s 95(3). The Secretary of State and the Welsh Ministers, in making regulations under s 94 containing such provision as is mentioned in s 95(2), must have regard to the desirability of maintaining a reasonable balance between the number of members of any local access forum appointed in accordance with head (a) and in accordance with head (b): s 95(4).

5 Countryside and Rights of Way Act 2000 s 94(4)(a).

6 Ie under the under Countryside and Rights of Way Act 2000 Pt I (ss 1-46) (see PARA 580 et seq).

7 Countryside and Rights of Way Act 2000 s 94(4)(b).

8 Countryside and Rights of Way Act 2000 s 94(4)(c).

9 Countryside and Rights of Way Act 2000 s 94(4)(d). In relation to England, the following bodies are prescribed: (1) any conservation board established by the Secretary of State under s 86 (see PARA 660); (2) any parish or town council for any part of the area in respect of which a local access forum is established; and (3) the English Sports Council (now known as Sport England): Local Access Forums (England) Regulations 2007, SI 2007/268, reg 21.

10 As to the meaning of 'open-air recreation' see PARA 581 note 1.

11 Countryside and Rights of Way Act 2000 s 94(4).

12 Countryside and Rights of Way Act 2000 s 94(5).

13 Countryside and Rights of Way Act 2000 s 94(6)(a).

14 Countryside and Rights of Way Act 2000 s 94(6)(b).

15 Countryside and Rights of Way Act 2000 s 94(6)(c).

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5. NATURE CONSERVATION AND BIODIVERSITY

(1) NATIONAL PARKS

636. Designation of national parks in England and Wales.

Natural England, in relation to England, and the Countryside Council for Wales, in relation to Wales¹, may designate, by order to be confirmed by the Secretary of State or the Welsh Ministers², those extensive tracts of country in relation to which, by reason of their natural beauty³ and the opportunities they afford for open-air recreation⁴, it appears to Natural England or the Council to be especially desirable to take the necessary measures to ensure the conservation and enhancement of natural beauty⁵, wildlife and cultural heritage and to promote opportunities for the understanding and enjoyment of their special qualities by the public⁶. Such designated areas are known as national parks⁷.

Before making such an order Natural England or the Council must consult⁸ with every joint planning board⁹ and local authority¹⁰ whose area includes any part of the proposed park¹¹. Public notice of the order must be given and an opportunity afforded for the consideration of objections before its confirmation by the Secretary of State or the Welsh Ministers¹². The order must describe the land by reference to a map and such other descriptive matter as Natural England or the Council thinks requisite¹³. Subject to a limited right to question its validity, the order comes into operation on the date of publication of a notice of its confirmation¹⁴.

Orders already made may be varied by the Secretary of State or the Welsh Ministers after consultation with Natural England or the Council¹⁵; but before a variation may be made consultation with any national park authority for the park in question and with every such board and council must take place and the same public notice must be given and the same opportunity for consideration of objections must be afforded as are required before the confirmation of an original order¹⁶. Orders amending orders already made may also be made by Natural England or the Council¹⁷.

Natural England or the Council must ensure that copies of any such order are available for inspection by the public at all reasonable times at its office, at the offices (where applicable) of any national park authority for the park in question, at the offices of any joint planning board or local authority concerned and at such other places in or near the park as Natural England or the Council determines¹⁸.

In preparing a development plan¹⁹ or proposals for the alteration of or additions to a development plan for any area included in a national park, the authority or authorities required to prepare the plan or, as the case may be, entitled to alter or add to it, must consult with Natural England or the Council and take into consideration any observations made by it²⁰.

1 The provisions of the National Parks and Access to the Countryside Act 1949 Pt II (ss 4A-14) apply to land in Wales as they apply to land in England: s 4A(1) (s 4A added by the Environmental Protection Act 1990 Sch 8 para 1(1), (4)). The Countryside Council for Wales has functions as respects Wales corresponding with those of Natural England in respect of England: see the National Parks and Access to the Countryside Act 1949 s 4A(2) (as so added; and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 9). 'Land' includes land covered by water: National Parks and Access to the Countryside Act 1949 s 114(1). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

The National Parks and Access to the Countryside Act 1949 does not extend to Northern Ireland (s 115(1), (2)), nor does Pt II apply to land under the regulation and management of the Corporation of London as Conservators of Epping Forest or land acquired by, and vested in, that corporation under the Corporation of London (Open Spaces) Act 1878 (see PARA 509) in the area known as Burnham Beeches (National Parks and Access to the Countryside Act 1949 s 112). After consultation with the Council of the Isles of Scilly the Secretary of State may, by order made by statutory instrument, provide for the application of the National Parks and Access to the Countryside Act 1949, the Countryside Act 1968, the Local Government Act 1972 s 184 and Sch 17, and the Wildlife and Countryside Act 1981 Pt II (ss 27A-52) to the Isles of Scilly as if those isles were a separate county, with such modifications or exceptions as may be specified: National Parks and Access to the Countryside Act 1949 s 111; Countryside Act 1968 s 46(1); Local Government Act 1972 Sch 17 para 40; Wildlife and Countryside Act 1981 s 68. See the National Parks and Access to the Countryside (Isles of Scilly) Order 1973, SI 1973/1395 (amended by SI 2001/1805), and the exceptions specified in the National Parks and Access to the Countryside (Isles of Scilly) Order 1973, SI 1973/1395, art 4(1). See also the Wildlife and Countryside (Isles of Scilly) Order 1983, SI 1983/512 (amended by SI 2001/1805); and the Wildlife and Countryside (Isles of Scilly) Order 2001, SI 2001/1805. The Wildlife and Countryside Act 1981 Pt II does not extend to Northern Ireland: s 74(6). As to the Secretary of State see PARA 519.

2 The National Parks and Access to the Countryside Act 1949 refers to the Minister of Town and Country Planning (see ss 5, 114(1)), whose functions have been transferred to the Secretary of State: see PARA 519. As to the Welsh Ministers see PARA 519.

3 See the National Parks and Access to the Countryside Act 1949 s 5(2)(a) (s 5(2) amended by the Environmental Protection Act 1990 Sch 8 para 1(5); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 10(a)). Natural England or the Council may, when applying the National Parks and Access to the Countryside Act 1949 s 5(2)(a) in relation to an area, take into account its wildlife and cultural heritage: s 5(2A)(a) (s 5(2A) added by the Natural Environment and Rural Communities Act 2006 s 59(1)). See also *Meyrick Estate Management Ltd v Secretary of State for Environment, Food and Rural Affairs* [2007] EWCA Civ 53, (2007) Times, 15 February, [2007] All ER (D) 09 (Feb).

4 In having regard to their character and their position in relation to centres of population: National Parks and Access to the Countryside Act 1949 s 5(2)(b) (as amended: see note 3). Natural England or the Council may, when applying s 5(2)(b) in relation to an area, take into account the extent to which it is possible to promote opportunities for the understanding and enjoyment of its special qualities by the public: s 5(2A)(b) (as added: see note 3).

5 References to the preservation or the conservation of the natural beauty of an area include references to the preservation or the conservation of its flora, fauna and geological and physiographical features: National Parks and Access to the Countryside Act 1949 s 114(2) (amended by the Countryside Act 1968 s 21(7); and the Environment Act 1995 Sch 10 para 2(8)).

6 See the National Parks and Access to the Countryside Act 1949 s 5(1), (2) (s 5(1) substituted by the Environment Act 1995 s 61(1)). Natural England or the Council must from time to time consider what areas there are in England or Wales falling within the National Parks and Access to the Countryside Act 1949 s 5(2), determine in what order they should be designated and proceed with their designation at such times as Natural England or the Council may determine: s 6(1) (amended by the Environmental Protection Act 1990 Sch 8 para 1(5); and the Natural Environment and Rural Communities Act 2006 Sch 11 paras 10(b), 11(1), (2), Sch 12). The Secretary of State or the Welsh Ministers may give directions as to the order and time of designation of these areas: see the National Parks and Access to the Countryside Act 1949 s 6(2). It is the duty of Natural England or the Council: (1) to consider, generally and in relation to particular national parks, in what way action needs to be taken under the National Parks and Access to the Countryside Act 1949 and the Town and Country Planning Act 1947 (repealed) (see **TOWN AND COUNTRY PLANNING**) for the purposes specified in the National Parks and Access to the Countryside Act 1949 s 5(1), and to make such recommendations with respect thereto to the Secretary of State or the Welsh Ministers and to national park authorities and local authorities as may appear to Natural England or the Council to be necessary or expedient (s 6(3)(a) (amended by the Environment Act 1995 Sch 10 para 2(1)(a); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 10(b))); and (2) to keep under review the progress made from time to time in accomplishing the purposes of the National Parks and Access to the Countryside Act 1949 s 5(1) and to make to the Secretary of State or the Welsh Ministers or any national park authority, local authority or other persons such representations as appear to Natural England or the Council to be necessary or expedient as to any matter affecting the accomplishment of those purposes (s 6(3)(b) (as so amended)). Without prejudice to the generality of s 6(3), it is the duty of Natural England or the Council, subject to and in accordance with the National Parks and Access to the Countryside Act 1949 in that behalf: (a) to give advice where the Secretary of State consults or the Welsh Ministers consult Natural England or the Council as to proposals for development of land in a national park, or the appropriate planning authority consults him or them (whether in compliance with a requirement imposed under the National Parks and Access to the Countryside Act 1949 or the Town and Country Planning Act 1947 (repealed) (see **TOWN AND COUNTRY PLANNING**) or otherwise) in connection with the preparation or amendment of a development plan (see PARA 645) or in connection with an application for permission to develop any such land (National Parks and Access to the Countryside Act 1949 s 6(4)(e) (s 6(4) amended by the Countryside Act 1968 Sch 5; and the Natural

Environment and Rural Communities Act 2006 Sch 11 paras 10(b), 11(1), (3), Sch 12)); (b) to make recommendations to the Secretary of State or Welsh Ministers and, where Natural England or the Council deems it appropriate, to other ministers as to any proposals for the development of land in a national park, being proposals for development in a way which appears to Natural England or the Council to be inconsistent with the maintenance of the area as a park (National Parks and Access to the Countryside Act 1949 s 6(4)(f) (as so amended)); (c) to notify to the Secretary of State or the Welsh Ministers, or where Natural England or the Council deems it appropriate, to other ministers, the general nature of the action which will in the opinion of Natural England or the Council need to be taken as respects land in a national park for any of the purposes specified in s 5(1), in cases where it appears to Natural England or the Council that the person notified should be informed thereof before considering future proposals for the development of the land for other purposes (s 6(4)(g) (as so amended)); and (d) if in any case Natural England or the Council is or are not satisfied that effect will be given to its recommendations or advice as to any matter mentioned in heads (a)-(c), to refer the matter to the Secretary of State or the Welsh Ministers and to advise him or them as to the exercise of any powers of direction or enforcement (including powers of making orders) conferred on him or them by the National Parks and Access to the Countryside Act 1949 or the Town and Country Planning Act 1947 (repealed) (see **TOWN AND COUNTRY PLANNING**) (National Parks and Access to the Countryside Act 1949 s 6(4)(h) (as so amended)). For these purposes, 'appropriate planning authority' means a national park authority, and includes a local authority, not being a local planning authority, by whom any powers of a local planning authority as respects a national park are exercisable: see s 6(6) (amended by the Environment Act 1995 Sch 10 para 2, Sch 24). Nothing in the National Parks and Access to the Countryside Act 1949 s 6 is to be construed as modifying the effect of any provision of that Act whereby any specific power or duty is conferred or imposed on Natural England or the Council or whereby any obligation is imposed on any other person to consult with Natural England or the Council: s 6(5) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 10).

As to the duty of all public bodies to conserve the natural beauty and amenity of the countryside see PARA 665. As to the functions of Natural England and the Council in relation to national parks and areas of outstanding natural beauty see PARAS 523-524.

7 National Parks and Access to the Countryside Act 1949 ss 5(3), 114(1) (s 5(3) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 10(a)).

8 In considering the expression 'after consultation' used in the New Towns Act 1946 (repealed), Bucknill LJ said 'In my view . . . it means that on the one side, the minister must supply sufficient information to the local authority to enable them to tender advice, and, on the other hand, a sufficient opportunity must be given to the local authority to tender that advice': *Rollo v Minister of Town and Country Planning* [1948] 1 All ER 13 at 17, CA; and see *Fletcher v Minister of Town and Country Planning* [1947] 2 All ER 496.

9 'Joint planning board' has the meaning assigned to it by the Town and Country Planning Act 1990 s 2 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 30); applied by the National Parks and Access to the Countryside Act 1949 s 114(1) (which refers to the Town and Country Planning Act 1947 (repealed)); and the Planning (Consequential Provisions) Act 1990 s 2(4).

10 'Local authority' means, in relation to England, a county council, district council or parish council; and, in relation to Wales, a county council, county borough council or community council: National Parks and Access to the Countryside Act 1949 s 7(7) (added by the Natural Environment and Rural Communities Act 2006 s 60(1), (3)).

11 National Parks and Access to the Countryside Act 1949 s 7(1) (amended by the Natural Environment and Rural Communities Act 2006 s 60(1), (2), Sch 11 para 10(c)).

12 See the National Parks and Access to the Countryside Act 1949 Sch 1 paras 1-4, which apply to orders designating national parks as they apply to access orders (see PARA 615 et seq) with the following exceptions:

72 (1) Notice of an order designating a national park or varying such an order must be given by publication in the London Gazette, two newspapers circulating in the country generally and at least one local newspaper circulating in every county or county borough which includes any land affected, but need not be served on anyone (Sch 1 para 1(3)(a) (amended by the Local Government (Wales) Act 1994 Sch 6 para 15(3))) except that where notice falls to be given under the National Parks and Access to the Countryside Act 1949 Sch 1 para 1 by any person in respect of any land which is already in a national park for which a national park authority is the local planning authority, that person must serve a copy of the notice on that authority (Sch 1 para 1(3A) (added by the Environment Act 1995 Sch 10 para 2(9))).

73 (2) If, as the result of any representation, objection, inquiry or other hearing, the Secretary of State thinks that Natural England, a national park authority, the county planning authority, or any other person ought to be consulted before he decides, or the Welsh Ministers think that the Council, a national park authority, the local planning authority or any other person ought to be consulted before they decide, whether to confirm or make the order with or without modifications, he or they must consult those persons; but, subject to the special rights where

there is a modification affecting land not in the original order (see PARA 616), there is no obligation to consult any other person or allow any further representations, objections, inquiry or other hearing: National Parks and Access to the Countryside Act 1949 Sch 1 para 2(5) (amended by the Local Government Act 1972 Sch 17 para 41; the Environmental Protection Act 1990 Sch 8 para 1(1), (17); the Local Government (Wales) Act 1994 Sch 6 para 15(3); the Environment Act 1995 Sch 10 para 2(9)(b); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 25).

- 74 (3) The National Parks and Access to the Countryside Act 1949 Sch 1 paras 1(3)(b), (4), 2(4) do not apply and the order is not required to be subject to special parliamentary procedure: see Sch 1 paras 1, 2, 4.

For additional detailed procedure on the making of orders designating national parks and for forms of notices of submission and confirmation of the order see the National Parks and Access to the Countryside Regulations 1950, SI 1950/1066, regs 15-17, 19, 20, Sch 2, Forms 1, 4 (amended by SI 1963/968).

'Local planning authority', 'county planning authority' and 'district planning authority' have the meanings assigned to them by the Town and Country Planning Act 1990 s 1 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28): see the National Parks and Access to the Countryside Act 1949 s 114(1) (which refers to the Town and Country Planning Act 1947 (repealed)); and the Planning (Consequential Provisions) Act 1990 s 2(4). The National Parks and Access to the Countryside Act 1949 Pt V (ss 59-83) (see PARA 581 et seq) has effect as if the Broads Authority were a local planning authority but as if s 74 (see PARA 582) and s 78 (see PARA 626) were omitted and the Broads were a national park: s 111A(3) (added by the Norfolk and Suffolk Broads Act 1988 Sch 3 para 2; and amended by the Environment Act 1995 Sch 24; and the Countryside and Rights of Way Act 2000 Sch 16 Pt 1). As to the Broads Authority see PARA 531; and **WATER AND WATERWAYS** vol 101 (2009) PARA 734. As to national park authorities as local planning authorities see PARA 644. As to national park authorities generally see PARA 526.

- 13 National Parks and Access to the Countryside Act 1949 s 7(2) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 10(c)).

- 14 See the National Parks and Access to the Countryside Act 1949 Sch 1 paras 8, 10.

- 15 National Parks and Access to the Countryside Act 1949 s 7(4) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 10(c)).

- 16 National Parks and Access to the Countryside Act 1949 s 7(5) (amended by the Environment Act 1995 Sch 10 para 2(2)).

- 17 Wildlife and Countryside Act 1981 s 45(1) (amended by the Environmental Protection Act 1990 Sch 8 para 6(1), (4); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 9(1), (2), Sch 12); Wildlife and Countryside Act 1981 s 41A (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 89). In each case, the provisions of the National Parks and Access to the Countryside Act 1949 s 7(5), (6) and Sch 1 apply to such an order: Wildlife and Countryside Act 1981 s 45(1) (as so amended).

- 18 National Parks and Access to the Countryside Act 1949 s 7(6) (amended by the Environment Act 1995 Sch 10 para 2(2); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 10(c)).

- 19 As to development plans see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 91. As to development plans in national parks see PARA 645.

- 20 National Parks and Access to the Countryside Act 1949 s 9(1) (amended by the Environment Act 1995 Sch 10 para 2(3); and the Natural Environment and Rural Communities Act 2006 s 60(1), (4), Sch 11 para 10(d), Sch 12). The functions of a local planning authority under the National Parks and Access to the Countryside Act 1949 s 9 are exercisable as respects any area outside a national park both by county planning authorities and district planning authorities: Local Government Act 1972 s 184(3) (amended by the Environment Act 1995 Sch 10 para 10(3)). However, where a national park authority is the local planning authority for a national park, the Local Government Act 1972 s 184 does not apply in relation to any functions conferred by or under the National Parks and Access to the Countryside Act 1949 (Environment Act 1995 s 68(1)); and those functions are the functions of the national park authority (see s 68(2); and PARA 644).

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637. Acquisition of land in a national park.

Where satisfied that it is expedient to do so the Secretary of State or the Welsh Ministers¹ may acquire by agreement any land² forming part of a national park by means of purchase, lease or exchange³. Unless in any particular case the Secretary of State determines or the Welsh Ministers determine otherwise, that land must be transferred to such other persons upon such trusts and subject to such conditions as appear expedient for ensuring that it is managed in such a way as to conserve and enhance its natural beauty⁴, wildlife and cultural heritage and to promote opportunities for the understanding and enjoyment of its special qualities by the public⁵. Whether the land is retained or caused to be transferred by the Secretary of State or the Welsh Ministers, he or they may defray or contribute towards the costs of its management⁶.

1 The National Parks and Access to the Countryside Act 1949 refers to the Minister of Town and Country Planning (see ss 14, 114(1)), whose functions have been transferred to the Secretary of State: see PARA 519. As to the Welsh Ministers see PARA 519.

2 As to the meaning of 'land' see PARA 636 note 1.

3 National Parks and Access to the Countryside Act 1949 s 14(1). As to the need for Treasury consent see s 14(1).

4 As to the conservation or preservation of natural beauty see PARA 636 note 5.

5 National Parks and Access to the Countryside Act 1949 14(2). The transfer may be on such terms as to payment or otherwise as may be provided for by the transfer arrangements: s 14(3). As to the need for Treasury consent see s 14(1).

6 National Parks and Access to the Countryside Act 1949 s 14(3), (4).

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638. Restrictions on converting moor and heath to agricultural land.

A national park authority¹ may, if satisfied that it is expedient to do so, by order² apply the following provisions to any land³ which is comprised in the relevant park and which appears to it to consist of or include moor or heath⁴. The provisions are that no person may by ploughing or otherwise convert into agricultural land⁵ any land to which the provisions apply and which is moor or heath which has not been agricultural land at any time within the preceding 20 years⁶, or carry out on any such land any other agricultural operation or any forestry operation which, in either case, appears to the national park authority to be likely to affect its character or appearance and is specified in the order applying the provisions to that land⁷. No order may be made in relation to Crown land unless the appropriate authority has consented to the making of it⁸.

The provisions do not apply in relation to any operation carried out, or caused or permitted to be carried out, by the owner or occupier of the land if one of them has, after the coming into force of the order, given the national park authority written notice⁹ of a proposal to carry out the operation, specifying its nature and the land on which it is proposed to carry it out, and one of the following conditions is satisfied¹⁰: (1) the national park authority has given its consent to the carrying out of the operation¹¹; (2) where that authority has neither given nor refused its consent, three months have expired from the giving of the notice¹²; and (3) where the authority has refused its consent, 12 months have expired from the giving of the notice¹³.

The national park authority may authorise persons in writing to enter on land to ascertain whether an order should be made in relation to the land or if an offence is being, or has been, committed on that land¹⁴.

Every local planning authority¹⁵ whose area comprises the whole or any part of a national park must, before the expiration of two years beginning with the relevant date¹⁶, prepare a map of the park or the part of it showing any areas to which these provisions apply¹⁷ whose natural beauty it is, in the authority's opinion, particularly important to conserve, and, at intervals of not more than five years, review the particulars contained in the map and make such revisions of it, if any, as may be required¹⁸. In considering whether any area to which these provisions apply is one whose natural beauty it is particularly important to conserve, a local planning authority must act in accordance with the guidelines from time to time issued by Natural England (in relation to England) or the Countryside Council for Wales (in relation to Wales)¹⁹.

1 As to national park authorities see PARA 526.

2 Such an order must be made by statutory instrument and the Statutory Instruments Act 1946 applies to such an instrument as if the order had been made by a Minister of the Crown: Wildlife and Countryside Act 1981 s 42(8) (substituted by the Natural Environment and Rural Communities Act 2006 s 63(1), (5)).

3 As to the meaning of 'land' see PARA 636 note 1; definition applied by the Wildlife and Countryside Act 1981 s 52(4).

4 Wildlife and Countryside Act 1981 s 42(1) (amended by the Natural Environment and Rural Communities Act 2006 s 63(1), (2)).

5 'Agricultural land' does not include land which affords rough grazing for livestock but is not otherwise used as agricultural land: Wildlife and Countryside Act 1981 s 52(1).

6 In considering for these purposes whether land has been agricultural land within the preceding 20 years, no account is to be taken of any conversion of the land into agricultural land which was unlawful under these provisions or under the Countryside Act 1968 s 14 (repealed): Wildlife and Countryside Act 1981 s 42(7), (9).

7 Wildlife and Countryside Act 1981 s 42(2) (amended by the Natural Environment and Rural Communities Act 2006 s 63(1), (3)). A person who, without reasonable excuse, contravenes the Wildlife and Countryside Act 1981 s 42(2) is liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine: s 42(5). As to the meaning of 'statutory maximum' see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

As to the need for an environmental impact assessment see **AGRICULTURAL LAND** vol 1 (2008) PARA 638 et seq; **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARAS 7-8; **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 60 et seq.

8 Wildlife and Countryside Act 1981 s 67(2) (amended by the Countryside and Rights of Way Act 2000 Sch 16 Pt III). As to the meaning of 'appropriate authority' see PARA 639 note 2; definition applied by the Wildlife and Countryside Act 1981 s 67(4). Subject to this provision Pt II (ss 27A-52) (except s 51 (see PARA 698)) applies to Crown land, that is to say, land an interest in which belongs to Her Majesty in the right of the Crown or the Duchy of Lancaster or to the Duchy of Cornwall, and land an interest in which belongs to a government department or is held on trust for Her Majesty for the purposes of a government department: s 67(1).

9 Where the national park authority is given notice under these provisions in respect of any land, the authority must forthwith send copies of the notice to Natural England or the Countryside Council for Wales: Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78); Wildlife and Countryside Act 1981 s 42(6) (amended by the Environment Act 1995 Sch 10 para 22(3); and the Natural Environment and Rural Communities Act 2006 s 63(1), (4)). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

10 Wildlife and Countryside Act 1981 s 42(3) (amended by the Environment Act 1995 Sch 10 para 22(3)).

11 Wildlife and Countryside Act 1981 s 42(4)(a) (amended by the Environment Act 1995 Sch 10 para 22(3)).

12 Wildlife and Countryside Act 1981 s 42(4)(b).

13 Wildlife and Countryside Act 1981 s 42(4)(c).

14 Wildlife and Countryside Act 1981 s 51(1)(m) (amended by the Countryside and Rights of Way Act 2000 s 80(1), (2)); Wildlife and Countryside Act 1981 s 51(2)(c) (amended by the Environment Act 1995 Sch 10 para 22(5); the Countryside and Rights of Way Act 2000 s 80(1), (4)(c); and the Natural Environment and Rural Communities Act 2006 s 63(6), Sch 12). It is an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale intentionally to obstruct a person acting in the exercise of such a power: Wildlife and Countryside Act 1981 s 51(4) (amended by the Criminal Justice Act 1982 s 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. Where a body corporate is guilty of an offence under the Wildlife and Countryside Act 1981 and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in such a capacity he, as well as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly: s 69(1). Where the affairs of a body corporate are managed by its members, s 69(1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 69(2).

15 References in the Wildlife and Countryside Act 1981 Pt II to a local planning authority are to be construed (except as respects a national park for which a national park authority is the local planning authority, a metropolitan county, or Greater London) as references to a county planning authority and a district planning authority: s 52(2) (amended by the Local Government Act 1985 Sch 3 para 7(1), (5); the Local Government (Wales) Act 1994 Sch 16 para 65(6), Sch 18; the Environment Act 1995 Sch 10 para 22(6), Sch 24; and the Countryside and Rights of Way Act 2000 Sch 9 para 5(1), (3)). However, this does not apply as respects any national park for which a national park authority is the local planning authority: Environment Act 1995 s 69(2) (b). A national park authority which is the local planning authority for any national park, and not any other authority, has the functions under the Wildlife and Countryside Act 1981 which are conferred as respects that park on a planning authority of any description: see the Environment Act 1995 s 69(1); and PARA 644. As to the meanings of 'county planning authority' and 'district planning authority' see PARA 636 note 12. As to national park authorities as local planning authorities see PARA 644.

16 'Relevant date' means the date of issue of the first guidelines under the Wildlife and Countryside Act 1981 s 43(1B) (see the text and note 19): s 43(3) (added by the Wildlife and Countryside (Amendment) Act 1985 s 3(5)). Where a national park authority is the local planning authority for any national park, and the national park authority was designated after 19 September 1995 (ie the commencement of the Environment Act 1995 s 69: see s 125(2)), the relevant date is the date on which the authority became the national park

authority: s 69(3)(a). In any other case, the Wildlife and Countryside Act 1981 s 43 has effect in relation to national park authorities as if the function of reviewing and revising any map of a part of a national park included a power to consolidate that map with other maps prepared under s 43 as respects other parts of that park: Environment Act 1995 s 69(3)(b).

17 These provisions apply to any area of mountain, moor, heath, woodland, down, cliff or foreshore, including any bank, barrier, dune, beach, flat or other land adjacent to the foreshore: Wildlife and Countryside Act 1981 s 43(3) (as added: see note 16).

18 Wildlife and Countryside Act 1981 s 43(1) (amended by the Local Government Act 1985 Sch 3 para 7(4); and the Wildlife and Countryside (Amendment) Act 1985 s 3(2), (3)). Such a map must be printed and put on sale to the public at such price as the authority may determine: Wildlife and Countryside Act 1981 s 43(2).

19 See the Wildlife and Countryside Act 1981 s 43(1A) (s 43(1A), (1B) added by the Wildlife and Countryside (Amendment) Act 1985 s 3(4); and amended by the Local Government Act 1985 Sch 3 para 7(4); and the Environmental Protection Act 1990 Sch 8 para 6(3), Sch 16 Pt VI); the Wildlife and Countryside Act 1981 s 43(1B) (as so added and amended; and further amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 90(1), (2)); and the Wildlife and Countryside Act 1981 s 41A (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 89). Before issuing or revising any guidelines Natural England or, as the case may be, the Council must consult such bodies as appear to it to represent interests concerned; and before preparing or revising any map a local planning authority must consult such bodies as appear to the authority to represent interests concerned with matters affecting the park or part of the park in question: Wildlife and Countryside Act 1981 s 43(1C) (added by the Wildlife and Countryside (Amendment) Act 1985 s 3(4); and amended by the Local Government Act 1985 Sch 3 para 7; and the Natural Environment and Rural Communities Act 2006 Sch 11 para 90(1), (3)).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(1) NATIONAL PARKS/639. Crown land.

639. Crown land.

A national park may include Crown land¹ and, with the consent of the appropriate authority², the statutory powers as to national parks³ may be exercised as respects any interest in Crown land⁴. Where a national park includes any Crown land, the appropriate authority and the local planning authority⁵ for the area in which the land is situated may enter into an agreement for securing that it will be managed in such a manner as to conserve and enhance its natural beauty, wildlife and cultural heritage or to promote opportunities for the understanding and enjoyment of the special qualities of the area by the public or to achieve both these purposes⁶. When such an agreement is made by any government department, Treasury approval is necessary⁷, and in considering whether to make or approve an agreement relating to land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, the Treasury and that department must have regard to the purposes for which the land is held by or for the department⁸.

1 'Crown land' means land an interest in which belongs to Her Majesty in right of the Crown or the Duchy of Lancaster or to the Duchy of Cornwall and land an interest in which belongs to a government department or is held in trust for Her Majesty for the purposes of a government department: National Parks and Access to the Countryside Act 1949 s 101(1). These words are sufficiently wide to include the Crown's rights over the foreshore: *Burnet v Barclay* 1955 JC 34. As to the Crown's rights over the foreshore see PARAS 510-511; and **CROWN PROPERTY** vol 12(1) (Reissue) PARA 242 et seq; **WATER AND WATERWAYS** vol 100 (2009) PARA 71.

2 'Appropriate authority', in relation to any Crown land, means: (1) in the case of land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or other government department having the management of the land in question; (2) in the case of land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy; (3) in the case of land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall or the possessor for the time being of the Duchy of Cornwall appoints; and (4) in the case of land belonging to a government department or held in trust for Her Majesty for the purpose of a government department, that department: National Parks and Access to the Countryside Act 1949 s 101(11)(a)-(d) (amended by virtue of the Crown Estate Act 1961 s 1; and the Interpretation Act 1978 Sch 1). The National Parks and Access to the Countryside Act 1949 refers to the Commissioners of Crown Lands who have been reconstituted as the Crown Estate Commissioners: see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 280 et seq. Questions of doubt as to who is the appropriate authority in a particular case must be determined by the Treasury: National Parks and Access to the Countryside Act 1949 s 101(11). This definition of 'appropriate authority' also applies for the purposes of the Countryside Act 1968 s 47 (see PARAS 566, 639): s 47(8).

3 In the National Parks and Access to the Countryside Act 1949 Pt II (ss 4A-14).

4 National Parks and Access to the Countryside Act 1949 s 101(2). 'Interest', in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an interest in land or by virtue of a licence or agreement, and in particular includes sporting rights: s 114(1). As to the meaning of 'land' see PARA 636 note 1.

5 As to the meaning of 'local planning authority' see PARA 636 note 12.

6 National Parks and Access to the Countryside Act 1949 ss 5(1), 101(3) (s 5(1) substituted by the Environment Act 1995 s 61(1)). The National Parks and Access to the Countryside Act 1949 s 5(1) applies where a national park authority has become a local planning authority, but otherwise s 5(1) (as originally enacted) still applies: see the Environment Act 1995 s 61(2)-(5). As to national park authorities see PARA 526. As to the conservation or preservation of natural beauty see PARA 636 note 5.

7 National Parks and Access to the Countryside Act 1949 s 101(10)(a) (amended by the Countryside Act 1968 s 47(9), Sch 5). Agreements made by the Crown Estate Commissioners do not require the approval of the Treasury under the National Parks and Access to the Countryside Act 1949 s 101(10)(a): Countryside Act 1968 s 47(9).

8 National Parks and Access to the Countryside Act 1949 s 101(10)(b).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(1) NATIONAL PARKS/640. Duty to further conservation etc in making farm capital grants.

640. Duty to further conservation etc in making farm capital grants.

Where an application for a farm capital grant¹ is made as respects expenditure incurred or to be incurred for the purposes of activities on land which is in a national park² or an area specified for this purpose, the appropriate minister³ must, so far as consistent with the purpose of the grant provisions⁴, so exercise his functions as to further the conservation and enhancement of the natural beauty⁵ and amenity of the countryside and to promote its enjoyment by the public⁶. Where the relevant authority⁷ has objected to the making of the grant on the ground that the activities in question have had or will have an adverse effect on the natural beauty or amenity of the countryside or its enjoyment by the public, the appropriate minister must not make the grant except after considering the objection and after consulting the Secretary of State or the Welsh Ministers⁸.

Where, in consequence of an objection by the relevant authority, an application for a grant as respects expenditure to be incurred is refused on the ground that the activities in question will have such an adverse effect as is mentioned above, the relevant authority must, within three months of receiving notice of the appropriate minister's decision, offer to enter into, in the terms of a draft submitted to the applicant, a management agreement⁹ imposing restrictions as respects those activities and providing for the making by it of payments to the applicant¹⁰.

1 As to the meaning of 'farm capital grant' see PARA 697 note 1 (definition applied by the Wildlife and Countryside Act 1981 s 41(5) (amended by the Agriculture Act 1986 Sch 3 para 4, Sch 4)). As to farm capital grants see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1345 et seq. As to the duties of ministers with respect to areas of special scientific interest see PARA 697.

2 For these purposes, the Broads are to be treated as a national park and, as respects land within the Broads, any reference in the Wildlife and Countryside Act 1981 s 41 to the relevant authority is accordingly a reference to the Broads Authority: s 41(5A) (added by the Norfolk and Suffolk Broads Act 1988 Sch 3 para 31(3); and amended by the Environment Act 1995 Sch 10 para 22(2)). As to the Broads Authority see PARA 531; and **WATER AND WATERWAYS** vol 101 (2009) PARA 734.

3 As to the meaning of 'appropriate minister' see PARA 697 note 2 (definition applied by the Wildlife and Countryside Act 1981 s 41(5) (as amended: see note 1)).

4 As to the meaning of 'grant provisions' see PARA 697 note 3 (definition applied by the Wildlife and Countryside Act 1981 s 41(5) (as amended: see note 1)).

5 References to the conservation of the natural beauty of any land includes references to the conservation of its flora, fauna, or geographical or physiographical features: Wildlife and Countryside Act 1981 s 52(3).

6 Wildlife and Countryside Act 1981 s 41(3)(a) (amended by the Agriculture Act 1986 s 20(4)(a), (b); and the Natural Environment and Rural Communities Act 2006 Sch 5 para 8(2), Sch 11 para 88(1), (2), Sch 12).

7 As to the meaning of 'relevant authority' see PARA 763 note 1 (definition applied by the Wildlife and Countryside Act 1981 s 41(5) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 88(1), (3))). See also note 2.

8 Wildlife and Countryside Act 1981 s 41(3)(b) (amended by the Agriculture Act 1986 s 20(4)(a), (b)). As to the Secretary of State and the Welsh Ministers see PARA 519.

9 As to the meaning of 'management agreement' see PARA 763 (definition applied by the Wildlife and Countryside Act 1981 s 41(5) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 88(1), (3))).

10 Wildlife and Countryside Act 1981 s 41(4). As to payments under such agreements see s 50 (amended by the Agriculture Act 1986 s 20(6); the Countryside and Rights of Way Act 2000 s 79; and the Natural Environment and Rural Communities Act 2006 Sch 11 para 94(1)-(4), Sch 12).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(1) NATIONAL PARKS/641. Duties of certain bodies and persons to have regard to the purposes for which national parks are designated.

641. Duties of certain bodies and persons to have regard to the purposes for which national parks are designated.

A national park authority¹, in pursuing the purposes of conserving and enhancing the natural beauty, wildlife and cultural heritage of an area and of promoting opportunities for the understanding and enjoyment of the special qualities of the area by the public², must seek to foster the economic and social well-being of local communities within the national park, and must co-operate with local authorities³ and public bodies whose functions include the promotion of economic or social development within the area of the national park⁴. In exercising or performing any functions in relation to land⁵ in any national park, a relevant authority⁶ must have regard to these purposes⁷ and if it appears that there is a conflict between the purposes, it must attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the park⁸.

1 As to national park authorities see PARA 526.

2 I.e. under the National Parks and Access to the Countryside Act 1949 s 5(1); see PARA 636. As to the conservation or preservation of natural beauty see PARA 636 note 5.

3 For these purposes, 'local authority' means, in relation to England, a county council, district council or parish council; and, in relation to Wales, a county council, county borough council or community council: National Parks and Access to the Countryside Act 1949 s 11A(6) (s 11A added by the Environment Act 1995 s 62(1); and the National Parks and Access to the Countryside Act 1949 s 11A(6) amended by the Environment Act 1995 Sch 24).

4 National Parks and Access to the Countryside Act 1949 s 11A(1) (as added (see note 3); and amended by the Natural Environment and Rural Communities Act 2006 Sch 12). This duty takes effect, in the case of any particular national park, as from the time when a national park authority becomes the local planning authority for that park: Environment Act 1995 s 62(2). As to national park authorities as local planning authorities see PARA 644.

5 As to the meaning of 'land' see PARA 636 note 1.

6 'Relevant authority' means: (1) any Minister of the Crown; (2) any public body; (3) any statutory undertaker; or (4) any person holding public office: National Parks and Access to the Countryside Act 1949 s 11A(3) (as added: see note 3). For these purposes, 'public body' includes: (a) any local authority, joint board or joint committee; or (b) any national park authority: s 11A(4) (as so added). 'Public office' means: (i) an office under Her Majesty; (ii) an office created or continued in existence by a public general Act of Parliament; or (iii) an office the remuneration in respect of which is paid out of money provided by Parliament: s 11A(4) (as so added). 'Joint board' and 'joint committee' mean: (A) a joint or special planning board for a national park reconstituted by order under the Local Government Act 1972 Sch 17 para 1 or 3 (both repealed), or a joint planning board within the meaning of the Town and Country Planning Act 1990 s 2 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 30); (B) a joint committee appointed under the Local Government Act 1972 s 102(1)(b) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 371); National Parks and Access to the Countryside Act 1949 s 11A(5) (as so added).

7 I.e. the purposes specified in the National Parks and Access to the Countryside Act 1949 s 5(1) (see PARA 636).

8 National Parks and Access to the Countryside Act 1949 s 11A(2) (as added: see note 3).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(1) NATIONAL PARKS/642. General functions and powers of national park authorities.

642. General functions and powers of national park authorities.

The functions of a national park authority from the time it is established to the time when it becomes the local planning authority¹ for the relevant park² are confined to the taking of such steps as the authority, after consultation with the Secretary of State, in relation to England, or the Welsh Ministers, in relation to Wales³, and any existing authority⁴ for that park, considers appropriate for securing that it is able properly to carry out its functions after that time⁵.

The powers of a national park authority include the power to do anything which is calculated to facilitate, or is conducive or incidental to: (1) the accomplishment of the purposes⁶ of conserving and enhancing the natural beauty, wildlife and cultural heritage of national parks and of promoting opportunities for the understanding and enjoyment of the special qualities of those parks by the public⁷; and (2) the carrying out of any functions conferred on it⁸. Those powers do not include either: (a) the power to do anything in contravention of any restriction imposed⁹ in relation to any express power of the authority¹⁰; or (b) a power to raise money by borrowing or otherwise in a manner which is not authorised¹¹. However, anything done in exercise of those powers¹² is not to be treated as excluded by reason only that it involves the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights¹³.

National park authorities also have a number of supplemental and incidental powers¹⁴ and various other statutory functions¹⁵. Any power to execute works which is conferred on a national park authority includes¹⁶, for the purposes of the carrying out of the authority's functions in relation to the relevant park, power to execute works of the relevant description outside, as well as inside, that park¹⁷.

1 As to national park authorities see PARA 526; and as to national park authorities as local planning authorities see PARA 644.

2 'Relevant park', in relation to a national park authority, means the area for which that authority is or is to be the national park authority: Environment Act 1995 s 79(1).

3 As to the Secretary of State and the Welsh Ministers see PARA 519.

4 As to the meaning of 'existing authority' see PARA 526 note 2.

5 Environment Act 1995 s 65(3). In the application of s 65(3) in the case of a national park authority established in relation to a national park in Wales, the reference to any existing authority for that park has effect as respects consultation carried out before 1 April 1996 as if it included a reference to any principal council whose area is wholly or partly comprised in that park: s 65(4). As to the meaning of 'principal council' see PARA 534 note 10.

6 I.e. under the National Parks and Access to the Countryside Act 1949 s 5(1)(a) (see PARA 636). As to the conservation or preservation of natural beauty see PARA 636 note 5.

7 Environment Act 1995 s 65(5)(a).

8 Environment Act 1995 s 65(5)(b). General duties as to the protection of interests of the countryside and the avoidance of pollution contained in the Countryside Act 1968 ss 37, 38 (see PARAS 523-524) apply to national park authorities: Environment Act 1995 s 65(2).

9 I.e. by virtue of the Environment Act 1995 Pt III (ss 61-79): see s 65(6).

10 Environment Act 1995 s 65(6)(a).

11 Environment Act 1995 s 65(6)(b).

12 ie powers under the Environment Act 1995 s 65(5) (see the text and notes 6-8).

13 Environment Act 1995 s 65(5)(6) proviso.

14 These powers include powers in relation to: (1) land (see the Environment Act 1995 Sch 8 paras 1, 2 (Sch 8 para 2 amended by the Town and Country Planning Act 1990 s 244A)); (2) transfer of securities on alteration of area (see the Environment Act 1995 Sch 8 para 4); (3) supply of goods and services (see Sch 8 para 5); (4) the promotion of bills (see Sch 8 para 7); (5) competitive tendering (see Sch 8 para 8 (amended by the Local Government Act 1988 ss 1(1), 18, 33(3), Sch 2; the Race Relations (Amendment) Act 2000 Sch 3; and the Local Government Act 2003 Sch 8 Pt 1)); (6) restrictions on publicity (see the Environment Act 1995 Sch 8 para 9); (7) charges (see Sch 8 para 11); (8) service agency agreements (see Sch 8 para 12); and (9) miscellaneous matters (see Sch 8 para 3).

15 These functions include functions in relation to: (1) common land (see the Environment Act 1995 Sch 9 para 1 (amended by the Commons Act 2006 Sch 5 para 6(a), Sch 6 Pt 2)); (2) open spaces (see the Environment Act 1995 Sch 9 para 2; and PARA 569); (3) nature reserves (see Sch 9 para 3; and PARA 665); (4) caravan sites (see Sch 9 para 4); (5) country parks (see Sch 9 para 5; and PARAS 566, 567); (6) provision of information and encouragement of visitors (see Sch 9 para 6); (7) derelict land (see Sch 9 para 7); (8) recreational facilities (see Sch 9 para 8; and PARA 559); (9) refuse disposal (see Sch 9 para 9); (10) ancient monuments and archaeological areas (see Sch 9 para 10); (11) footpaths and bridleways (see Sch 9 para 11 (amended by the Countryside and Rights of Way Act 2000 Sch 6 para 26)); (12) litter (see the Environment Act 1995 Sch 9 para 12); (13) listed and historic buildings (see Sch 9 para 13); (14) hazardous substances (see Sch 9 para 14); (15) local charities (see Sch 9 para 15); and (16) overseas assistance (see Sch 9 para 16). At the date at which this volume states the law, the amendment made to Sch 9 para 1 (see head (1) above) by the Commons Act 2006 Sch 6 Pt 2 had not been brought into force in relation to Wales; and the Environment Act 1995 Sch 9 para 1 is further prospectively amended by the Commons Act 2006 Sch 5 para 6(b).

16 ie except in so far as the contrary intention appears: see the Environment Act 1995 Sch 8 para 6.

17 Environment Act 1995 Sch 8 para 6.

UPDATE

642 General functions and powers of national park authorities

NOTE 14--Environment Act 1995 Sch 8 para 7 amended: Local Democracy, Economic Development and Construction Act 2009 Sch 4 para 7.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(1) NATIONAL PARKS/643. National park management plans.

643. National park management plans.

Every national park authority¹ must, within three years after its operational date², prepare and publish a national park management plan, which formulates its policy for the management of the relevant park and for the carrying out of its functions in relation to that park³. An authority must review its plan within five years of its operational date and thereafter at intervals not exceeding five years⁴. Where an authority reviews any plan⁵ it must: (1) determine on that review whether it would be expedient to amend the plan and what amendments would be appropriate⁶; (2) make any amendments it considers appropriate⁷; and (3) publish a report on the review specifying any amendments made⁸.

An authority which is proposing to publish, adopt or review any plan must:

- 170 (a) give notice of the proposal to every principal council⁹ whose area is wholly or partly comprised in the relevant park and, according to whether that park is in England or in Wales, to Natural England or to the Countryside Council for Wales¹⁰;
- 171 (b) send a copy of the plan, together (where appropriate) with any proposed amendments of the plan, to every body to which notice of the proposal is required to be given by head (a)¹¹; and
- 172 (c) take into consideration any observations made by any such body¹².

A national park authority must send to the Secretary of State or the Welsh Ministers a copy of every plan, notice or report which it is required to publish¹³.

1 As to national park authorities see PARA 526.

2 'Operational date' means the date on which the authority becomes the local planning authority for the relevant park: Environment Act 1995 s 66(9). As to national park authorities as local planning authorities see PARA 644. As to the meaning of 'relevant park' see PARA 642 note 2.

3 Environment Act 1995 s 66(1). Provision is made to deal with the situation where immediately before the operational date a plan was prepared and published pursuant to the Local Government Act 1972 Sch 17 para 18 (repealed): see the Environment Act 1995 s 66(2), (3) (5).

4 Environment Act 1995 s 66(4).

5 ie any plan under the Environment Act 1995 s 66(1), (2): see s 66(6).

6 Environment Act 1995 s 66(6)(a).

7 Environment Act 1995 s 66(6)(b).

8 Environment Act 1995 s 66(6)(c).

9 As to the meaning of 'principal council' see PARA 534 note 10.

10 Environment Act 1995 s 66(7)(a) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 143). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

11 Environment Act 1995 s 66(7)(b).

12 Environment Act 1995 s 66(7)(c).

13 Environment Act 1995 s 66(8). As to the Secretary of State and the Welsh Ministers see PARA 519.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(1) NATIONAL PARKS/644. National park authorities as local planning authorities.

644. National park authorities as local planning authorities.

The national park authority¹ for a national park is the sole local planning authority for the area of the park, and accordingly functions conferred on a planning authority of any description² are, in relation to the park, functions of the national park authority, and not of any other authority; and, consequently, so much of the area of any other authority as is included in the park is to be treated as excluded from any area for which that other authority is a planning authority of any description³. The national park authority becomes the sole local planning authority with respect to the national park from such time as may be specified in the order establishing that authority in relation to the park for which it is the authority⁴.

Where a national park authority is the local planning authority for a national park, certain provisions⁵ do not apply as respects that park in relation to any of the functions conferred by or under the National Parks and Access to the Countryside Act 1949 or the Countryside Act 1968 on a planning authority of any description⁶. Functions previously exercisable by local planning authorities or county planning authorities under those Acts or the Wildlife and Countryside Act 1981 are now exercisable by national park authorities⁷.

1 As to national park authorities see PARA 526.

2 Ie including the functions of a mineral planning authority under the planning Acts and under the Planning and Compensation Act 1991: Town and Country Planning Act 1990 s 4A(2)(a) (s 4A added by the Environment Act 1995 s 67(1)). As to the meanings of the 'planning Acts' and 'mineral planning authority' see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 2, 29.

3 Town and Country Planning Act 1990 s 4A(2) (as added: see note 2). See also **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 32. For these purposes, functions under the planning Acts which (apart from s 4A) are conferred: (1) in relation to some areas on the county or district planning authorities for those areas; and (2) in relation to other areas on the councils for those areas, are to be treated, in relation to those other areas, as conferred on each of those councils as the local planning authority for its area: s 4A(3) (as so added). The functions of a local planning authority by virtue of ss 198-201, 206, 207-209, 211-215 (see **TOWN AND COUNTRY PLANNING**), so far as they are functions of a national park authority by virtue of s 4A, are exercisable as respects any area which is or is included in an area for which there is a district council, concurrently with the national park authority, by that council: s 4A(4) (as so added). For the purposes of any enactment relating to the functions of a district planning authority, the functions of a district council by virtue of s 4A(4) are deemed to be conferred on it as a district planning authority and as if the district were the area for which it is such an authority: s 4A(5) (as so added). As to county, district and local planning authorities see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28 et seq.

Where land straddles the border of a national park, the appropriate planning authority is the national park authority in respect of land inside the park, and the county council in respect of land outside the park: *R v Northumberland National Park Authority, ex p Secretary of State for Defence* (1998) 77 P & CR 120.

Where development of land in a national park is the subject of a planning application, the existence of national park status and any special policies will be relevant considerations. As to development plans see PARA 645. As to development of land in a national park see the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(5), (6); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 256.

4 Town and Country Planning Act 1990 s 4A(1) (as added: see note 2). In relation to the national park authorities that were established for the national parks in England the date specified for the purposes of s 4A was 1 April 1997: National Park Authorities (England) Order 1996, SI 1996/1243, art 16. In relation to the national park authorities that were established for the national parks in Wales the date specified for the purposes of the Town and Country Planning Act 1990 s 4A was 1 April 1996: National Park Authorities (Wales) Order 1995, SI 1995/2803, art 5. As to the national park authorities for England and Wales see PARA 526.

5 Ie the Local Government Act 1972 Sch 17 para 37: see PARA 588.

6 The functions conferred by the National Parks and Access to the Countryside Act 1949 Pt II (ss 4A-14), ss 61-63 (repealed), ss 78, 90(5), 92 (so far as relating to parking places in a national park), ss 99(3), 101(3), and the Countryside Act 1968 ss 12(5), 13 on a local planning authority are exercisable by a county planning authority (Local Government Act 1972 s 184(1), (2) (s 184(1) substituted by the Local Government (Wales) Act 1994 Sch 6 para 1; and amended by virtue of the Environment Act 1995 Sch 10 paras 10(2), 38(1))), except where the national park authority is the local planning authority for a national park (see the Environment Act 1995 s 68(1)). In such a case, the functions are the functions of the national park authority: s 68(2). As to the meaning of 'county planning authority' see PARA 636 note 12.

7 See the Environment Act 1995 ss 68(2)-(10), 69(1), which provide as follows:

- 75 (1) The functions which are conferred on a local planning authority by or under the National Parks and Access to the Countryside Act 1949 or the Countryside Act 1968 and the functions conferred on a county planning authority (or, in relation to Wales, a local planning authority) by the National Parks and Access to the Countryside Act 1949 s 69 (see PARA 621) are, as respects the whole or any part of a national park for which a national park authority is the local planning authority, functions of that authority and not of any other authority: Environment Act 1995 s 68(2)(a).
- 76 (2) References in the National Parks and Access to the Countryside Act 1949 and the Countryside Act 1968 to a local planning authority whose area consists of or includes the whole or any part of a national park are to be construed, in relation to any national park for which a national park authority is the local planning authority, as references to the national park authority: Environment Act 1995 s 68(2)(b).
- 77 (3) Other references in the National Parks and Access to the Countryside Act 1949 and the Countryside Act 1968 to a local planning authority and the references to a local authority in the National Parks and Access to the Countryside Act 1949 s 103 (see PARA 668) and the Countryside Act 1968 s 10 (see PARA 567) and ss 43-45 (see PARAS 503, 566-567) have effect accordingly: Environment Act 1995 s 68(2)(c).
- 78 (4) The functions conferred by or under the National Parks and Access to the Countryside Act 1949 s 12 (see PARA 646) or the Countryside Act 1968 s 12 (see PARA 646) which are exercisable by virtue of the Environment Act 1995 s 68 by a national park authority in a national park (a) are exercisable by that authority outside the relevant park on any land in the neighbourhood of that park; but (b) are so exercisable only under arrangements made with the local planning authority for the area where they are exercised: s 68(4).
- 79 (5) The National Parks and Access to the Countryside Act 1949 ss 61-63 (repealed) have effect in accordance with heads (1)-(3) as respects the area of any national park for which a national park authority has become the local planning authority (a) in the case of a park designated after 19 September 1995 (ie the commencement of the Environment Act 1995 s 68: see s 125(2)) as if the National Parks and Access to the Countryside Act 1949 s 61(1) applied with the substitution for the reference to the commencement of that Act of a reference to the time when that authority became the local planning authority for that park; (b) as if no area were required by virtue of s 61(3), or of any previous review under s 61, to be excluded from any area to be reviewed by virtue of head (a); and (c) in the case of a park designated before 19 September 1995, as if (i) the power (if any) to make a resolution for the purposes of the proviso to s 61(3) as respects any part of the area of the park which has not previously been reviewed under s 61; and (ii) the functions which, where such a resolution has been so made, are conferred on the authority which made it or on any authority which has conducted a review in pursuance of the resolution, were a power or, as the case may be, functions of the national park authority, and not of any other authority: Environment Act 1995 s 68(5).
- 80 (6) The following functions, so far as exercisable by a national park authority in relation to land or countryside in a national park in England for which that authority is the local planning authority, ie (a) those conferred by or under the National Parks and Access to the Countryside Act 1949 s 89 (see PARA 647); and (b) those conferred by the Countryside Act 1968 s 10 (see PARA 567), are exercisable in relation to so much of that park as is comprised in a district for which there is a district council, concurrently with the national park authority, by that district council: Environment Act 1995 s 68(6).
- 81 (7) For the purposes of any enactment relating to the functions of a district planning authority, the functions of a district council by virtue of head (6) are deemed to be conferred on it as a district planning authority and as if the district were the area for which it is such an authority: s 68(7).

- 82 (8) The following powers (ie (a) those conferred on a local authority by or under the National Parks and Access to the Countryside Act 1949 s 92 (see PARA 650); and (b) those conferred on a local authority by or under the Countryside Act 1968 s 41 (see PARAS 648, 566-567)), so far as they are conferred in relation to any of the functions which by virtue of the Environment Act 1995 s 68 are functions of a national park authority as respects the relevant park, are exercisable by that authority and also, in the case of those conferred by or under the Countryside Act 1968 s 41, by a district council in relation to that council's functions by virtue of head (6)(b), but not by any other authority: Environment Act 1995 s 68(8).
- 83 (9) The National Parks and Access to the Countryside Act 1949 s 104 (see PARA 651), except s 104(11), has effect as if references to a local authority included references to a national park authority: Environment Act 1995 s 68(9).
- 84 (10) For the purposes of any functions conferred on a national park authority by virtue of s 68, references in any enactment to the area of the authority are to be construed as references to the relevant park: s 68(10).
- 85 (11) A national park authority is the relevant authority for the purposes of the Wildlife and Countryside Act 1981 s 39 (see PARA 763), s 41 (see PARA 640) and s 50 (see PARA 687) as respects any land in any national park for which that authority is the local planning authority: Environment Act 1995 s 69(2)(a).
- 86 (12) The Wildlife and Countryside Act 1981 s 52(2) (see PARA 638) does not apply as respects any national park for which a national park authority is the local planning authority: Environment Act 1995 s 69(2)(b).
- 87 (13) The Wildlife and Countryside Act 1981 s 43 (see PARA 638) has effect in accordance with the Environment Act 1995 s 69(1), (2) as follows: (a) in the case of a national park designated after 19 September 1995 (ie the date on which s 69 came into force: see s 125(2)), as if the relevant date for these purposes were the date on which the national park authority became the local planning authority for the park (s 69(3)(a)); and (b) in any other case, as if the function of reviewing and revising any map of a part of the park in question included a power, in pursuance of the review and revisions, to consolidate that map with other maps prepared under s 43 as respects other parts of that park (Environment Act 1995 s 69(3)(b)).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(1) NATIONAL PARKS/645. Development plans.

645. Development plans.

A national park authority in England may, when preparing, altering or replacing a development plan¹, include proposals, which have not yet been adopted, in respect of a development plan which was being made, altered or replaced by a transferor authority² prior to 1 April 1997³ in respect of an area for which the national park authority has a duty to prepare a development plan⁴. The national park authority must publish a statement identifying a proposal so included⁵. Where the national park authority is satisfied that there has been no significant change in circumstances affecting the proposal, it need not repeat any step taken by the transferor authority in respect of that proposal for the purpose of complying with the Town and Country Planning Act 1990⁶ or with regulations made under it⁷. Where an inquiry or other hearing is held for the purpose of considering an objection to proposals in respect of a development plan, the person holding the inquiry or other hearing need not allow an objector to appear if he is satisfied that the objection is in respect of an identified proposal⁸ and the person objecting has had his objection in respect of the proposal heard at an inquiry or other hearing held by the transferor authority or, where a matter affecting consideration of the proposal to which the objection relates has been considered at an examination in public, considered by such an authority⁹.

Where (1) a development plan is operative in the area of a national park authority¹⁰; (2) development plan proposals are being prepared by that authority¹¹; (3) that authority has published a statement identifying a policy included in the plan as an existing policy¹²; and (4) a local inquiry or other hearing is held for the purpose of considering any objection to the proposals¹³, the person holding the inquiry or other hearing need not allow an objector to appear if he is satisfied that: (a) the objection is to a policy identified in the statement published as mentioned in head (3)¹⁴; (b) the policy so identified is an existing policy¹⁵; and (c) there has been no significant change in circumstances affecting the existing policy since it first formed part of the plan mentioned in head (1)¹⁶.

Structure plans applying immediately before 1 April 1997 apply to national park authorities¹⁷.

1 'Development plan' has the meaning assigned to it by the Planning and Compulsory Purchase Act 2004 s 38 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 91): Town and Country Planning Act 1990 s 336(1) (definition amended by the Planning and Compulsory Purchase Act 2004 Sch 6 para 15); applied by the National Park Authorities (England) Order 1996, SI 1996/1243, Sch 4 para 1. Without prejudice to art 13 (see PARA 526), any provision of a development plan applying to the area of a national park continues to apply to that area until replaced by a provision which so applies, and which is expressed to supersede the preserved provision: Sch 4 paras 1, 2.

2 As to the meaning of 'transferor authority' see PARA 526 note 2.

3 I.e. the date on which the national park authorities for England became the local planning authorities for their respective national parks: see the National Park Authorities (England) Order 1996, SI 1996/1243, art 16; and PARA 644 note 4.

4 National Park Authorities (England) Order 1996, SI 1996/1243, Sch 4 para 3(2). As to development of land in a national park see the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(5), (6); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 256.

5 National Park Authorities (England) Order 1996, SI 1996/1243, Sch 4 para 3(3).

6 In the National Park Authorities (England) Order 1996, SI 1996/1243, Sch 4 para 3 any reference to the Town and Country Planning Act 1990 is a reference to that Act in the form in which it was in force immediately

before commencement of the Planning and Compensation Act 1991 or as amended by that Act: National Park Authorities (England) Order 1996, SI 1996/1243, Sch 4 paras 1, 3(1).

7 National Park Authorities (England) Order 1996, SI 1996/1243, Sch 4 para 3(4).

8 le under the National Park Authorities (England) Order 1996, SI 1996/1243, Sch 4 para 3(3).

9 National Park Authorities (England) Order 1996, SI 1996/1243, Sch 4 para 3(5).

10 National Park Authorities (England) Order 1996, SI 1996/1243, Sch 4 para 4(1)(a).

11 National Park Authorities (England) Order 1996, SI 1996/1243, Sch 4 para 4(1)(b).

12 National Park Authorities (England) Order 1996, SI 1996/1243, Sch 4 para 4(1)(c). 'Existing policy' means a policy or proposal the substance of which (however expressed) was contained in a development plan which was operative as mentioned in head (1) in the text: Sch 4 para 4(1).

13 National Park Authorities (England) Order 1996, SI 1996/1243, Sch 4 para 4(1)(d).

14 National Park Authorities (England) Order 1996, SI 1996/1243, Sch 4 para 4(2)(a).

15 National Park Authorities (England) Order 1996, SI 1996/1243, Sch 4 para 4(2)(b).

16 National Park Authorities (England) Order 1996, SI 1996/1243, Sch 4 para 4(2)(c).

17 See the National Park Authorities (England) Order 1996, SI 1996/1243, Sch 4 para 5. The Town and Country Planning General Regulations 1992, SI 1992/1492, and the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419 (see **TOWN AND COUNTRY PLANNING**) apply to national park authorities: see the National Park Authorities (England) Order 1996, SI 1996/1243, Sch 5 paras 15, 16.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(1) NATIONAL PARKS/646. Provision of facilities.

646. Provision of facilities.

A local planning authority¹ whose area consists of or includes the whole or any part of a national park² may arrange for the provision of accommodation, meals and refreshments (including alcohol), camping sites and parking places³. In addition, at the request of and in accordance with terms laid down by Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales⁴, it may provide study centres and other facilities for learning about the history, natural features, flora and fauna of the national park and the objects of architectural, archaeological or historical interest in it⁵. However, it may not provide accommodation, meals or refreshments unless it appears to the authority that existing facilities are inadequate or unsatisfactory⁶. A local planning authority may, on being so authorised in any particular case by the Secretary of State or the Welsh Ministers⁷, acquire land compulsorily for those purposes⁸, but it is not authorised to do anything which would be otherwise actionable on land in which any other person has an interest without his consent⁹.

Such a local planning authority has power also to carry out such work and do such other things as may appear to it necessary or expedient for facilitating the use by the public of any waterway¹⁰ in the park for sailing, boating, bathing or fishing or other forms of recreation¹¹ when satisfied that existing facilities are inadequate or unsatisfactory¹². For this purpose a local planning authority may enter into an agreement with any other authority having similar powers for this work to be carried out by that other authority¹³ and, when no such agreement is entered into and the Secretary of State considers or the Welsh Ministers consider that these powers should be exercised by such other authority, he or they may, after consultation with both authorities, direct that these powers should be exercised by the other authority¹⁴. Before exercising these powers, a local planning authority must consult with such other authorities having functions relating to the waterway as the Secretary of State or the Welsh Ministers may direct¹⁵; and, where an authority so consulted raises objection to a proposal, the proposal may not be proceeded with unless the Secretary of State so directs or the Welsh Ministers so direct after giving both authorities an opportunity of being heard before a person appointed for the purpose¹⁶. A local planning authority may acquire land compulsorily for the purpose of these powers¹⁷; but it is not authorised to do anything which would be otherwise actionable on a waterway in which any other person has an interest¹⁸.

1 As to the meaning of 'local planning authority' see PARAS 636 note 12, 644. The functions under the National Parks and Access to the Countryside Act 1949 s 12 or the Countryside Act 1968 s 12 which are exercisable by virtue of the Environment Act 1995 s 68 by a national park authority are exercisable by that authority outside the relevant park on any land in the neighbourhood of that park; but are so exercisable only under arrangements made with the local planning authority for the area where they are exercised: s 68(4). As to national park authorities see PARA 526. As to the meaning of 'relevant park' see PARA 642 note 2.

2 As to national parks see PARA 636 et seq.

3 See the National Parks and Access to the Countryside Act 1949 s 12(1) (amended by the Environment Act 1995 Sch 10 para 2(4); and the Licensing Act 2003 Sch 6 para 20(a)); and the Countryside Act 1968 s 12(1) (amended by the Environment Act 1995 Sch 10 para 8(2); and the Natural Environment Rural Communities Act 2006 Sch 11 para 46(1), (2), Sch 12).

4 As to Natural England and the Countryside Council for Wales see PARAS 523-524.

5 Countryside Act 1968 s 12(1) (as amended: see note 3). These functions include: (1) the provision of public sanitary conveniences; and (2) the provision of receptacles for refuse or litter and services for the regular emptying and cleansing of such receptacles: s 12(2). Expenses incurred by the authority under s 12(1) are

expenses towards which Natural England or the Council may make contributions under the National Parks and Access to the Countryside Act 1949 s 86 (see PARAS 523-524): Countryside Act 1968 s 12(1).

6 National Parks and Access to the Countryside Act 1949 s 12(1) proviso.

7 See the National Parks and Access to the Countryside Act 1949 s 103(1); and PARA 668. As to the Secretary of State and the Welsh Ministers see PARA 519.

8 National Parks and Access to the Countryside Act 1949 s 12(4). As to the meaning of 'land' see PARA 636 note 1.

9 National Parks and Access to the Countryside Act 1949 s 12(3).

10 'Waterway' means any lake, river, canal or other waters any of which are suitable, or can reasonably be rendered suitable, for sailing, boating, bathing or fishing: National Parks and Access to the Countryside Act 1949 s 114(1); applied by the Countryside Act 1968 s 49(1).

11 National Parks and Access to the Countryside Act 1949 s 13(1) (amended by the Countryside Act 1968 s 12(6); and the Environment Act 1995 Sch 24). If the park is bounded by the sea or other waterway which is not part of the sea the local planning authority has power to carry out any work for these purposes on land which is in or in the neighbourhood of the park, if the existing facilities are inadequate or unsatisfactory (Countryside Act 1968 s 12(3)); and the authority may construct jetties wholly or partly in the sea or other waters (s 12(4)). Before constructing jetties etc the authority must seek the consent of the Environment Agency and such authorities being authorities which under any enactment have functions relating to the part of the sea or other waters in question as the Secretary of State or the Welsh Ministers may direct, and if consent is withheld s 12(4) and Sch 1 apply: s 12(4) (amended by the Water Act 1989 Sch 25 para 37(2); and SI 1996/593). The Countryside Act 1968 s 12(3), (4) has effect as if it formed part of the National Parks and Access to the Countryside Act 1949 s 13(1): Countryside Act 1968 s 12(6). As to the Environment Agency see PARA 528; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq. Thus the proposals may not be proceeded with unless, on an application specifying the proposals and the grounds for withholding consent, the Secretary of State so directs or the Welsh Ministers so direct, after affording the objecting authority and the proposing authority an opportunity of being heard by a person appointed for the purpose, and after considering his report: Sch 1 paras 1, 2(1), (2). The direction may impose conditions or modifications: Sch 1 para 2(1).

The local planning authority may make byelaws regulating the use of the works and facilities and services provided in connection with them, but before making such byelaws it must consult Natural England (if the national park is in England) or the Countryside Council for Wales (if the national park is in Wales); provided that these byelaws must not interfere with the exercise of any functions relating to the waters or land to which the byelaws apply which are exercisable by any authority under any enactment: see s 12(5); and PARA 649. As to the meaning of 'county planning authority' see PARA 636 note 12. The National Parks and Access to the Countryside Act 1949 s 106 (see PARA 648) applies as if byelaws made under this provision were made under that Act: see the Countryside Act 1968 s 12(5).

12 National Parks and Access to the Countryside Act 1949 s 13(1) proviso.

13 National Parks and Access to the Countryside Act 1949 s 13(2). Where such an agreement is made for the exercise of any power by any such authority, other than a local planning authority, no limitation imposed by law on the capacity of that authority by virtue of its constitution operates so as to prevent the authority from exercising that power: s 13(3).

14 National Parks and Access to the Countryside Act 1949 s 13(4). The National Park and Access to the Countryside Act 1949 refers to the Minister of Town and Country Planning (see ss 13, 114(1)), whose functions have been transferred to the Secretary of State or the Welsh Ministers: see PARA 519. The provisions of s 13(2)-(4) apply to any part of the sea bounding a national park as they apply to a waterway: Countryside Act 1968 s 12(7). Nothing in the National Parks and Access to the Countryside Act 1949 s 13 authorises the carrying out of any operation in contravention of the Coast Protection Act 1949 s 34 (see **WATER AND WATERWAYS** vol 101 (2009) PARA 533 et seq): see the Countryside Act 1968 s 12(8).

15 National Parks and Access to the Countryside Act 1949 s 13(5).

16 National Parks and Access to the Countryside Act 1949 s 13(6).

17 National Parks and Access to the Countryside Act 1949 s 13(8). The power of compulsory acquisition is exercisable on its being authorised in any particular case by the Secretary of State or the Welsh Ministers: see s 103(1); and PARA 668. As to compulsory acquisition of land generally see **COMPULSORY ACQUISITION OF LAND**.

18 See the National Parks and Access to the Countryside Act 1949 s 13(7). This restriction does not apply to land or water to which the public have access by virtue of an access order under Pt V (ss 59-83) (see PARA 581 et seq): s 13(7) proviso.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(1) NATIONAL PARKS/647. Planting of trees and treatment of derelict land.

647. Planting of trees and treatment of derelict land.

A local planning authority¹ may plant trees² on land³ in its area for the purpose of preserving or enhancing the natural beauty of the land⁴. Where it appears to a local authority⁵ that any land in its area is derelict, neglected or unsightly⁶, it may carry out, for the purpose of reclaiming or improving that land or of enabling it to be brought into use, such works on that land or any other land as appear to it expedient⁷.

These powers⁸ may be exercised by an authority either on land belonging to it or with the consent of all persons interested therein on other land; and in relation to such other land these powers include power to make arrangements whereby the planting or work is carried out, on such terms as may be provided under the arrangements, by a person other than the authority⁹. Where a local authority exercises its powers over land not belonging to it, the management of the land, so far as related to anything done by the authority, may be undertaken either by the authority or by the person interested in the land as may be agreed between them and on such terms as may be so agreed¹⁰.

A local authority may acquire land compulsorily for the purpose of any of these functions¹¹.

These provisions apply to Crown land if the appropriate authority consents to their application¹².

1 As to the meaning of 'local planning authority' see PARA 636 note 12. The National Parks and Access to the Countryside Act 1949 s 89 has effect as if the Broads Authority were a local planning authority: s 111A(2) (s 111A added by the Norfolk and Suffolk Broads Act 1988 Sch 3 para 2). As to the Broads Authority see PARA 531; and **WATER AND WATERWAYS** vol 101 (2009) PARA 734. Where a national park authority is the local planning authority, the functions under the National Parks and Access to the Countryside Act 1949 s 89 are exercisable in relation to so much of that park as is comprised in a district for which there is a district council, concurrently with the national park authority, by that council (Environment Act 1995 s 68(6)); and the functions are deemed to be conferred on the district council as a district planning authority and as if the district were the area for which it is such an authority (s 68(7)). As to national park authorities as local planning authorities see PARA 644; and as to national park authorities generally see PARA 526.

2 'Planting of trees' includes the planting of bushes or planting or sowing of flowers and the sowing of grass and the laying of turf: National Parks and Access to the Countryside Act 1949 s 114(3).

3 As to the meaning of 'land' see PARA 636 note 1.

4 National Parks and Access to the Countryside Act 1949 s 89(1). As to the conservation or preservation of natural beauty see PARA 636 note 5. As to the power to make tree preservation orders see **FORESTRY** vol 52 (2009) PARA 61.

5 'Local authority', for these purposes, means a local planning authority, a county council not being a local planning authority, or a district council: National Parks and Access to the Countryside Act 1949 s 89(7) (added by the Local Authorities (Land) Act 1963 s 6(4); and amended by the Local Government Act 1972 Sch 17 para 38, Sch 30).

6 National Parks and Access to the Countryside Act 1949 s 89(2)(a) (s 89(2) substituted by the Derelict Land Act 1982 s 3(1)).

7 National Parks and Access to the Countryside Act 1949 s 89(2) (as substituted: see note 6). Particular provision is made in relation to land that is not derelict, neglected or unsightly but is likely to become so by reason of actual or apprehended collapse of the surface as the result of the carrying out of relevant mining operations which have ceased to be carried out: see s 89(2)(b); the Mineral Workings Act 1985 ss 7-8; and **MINES, MINERALS AND QUARRIES**. As to urban development and regeneration see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1306 et seq.

8 le the powers under the National Parks and Access to the Countryside Act 1949 s 89.

9 See the National Parks and Access to the Countryside Act 1949 s 89(3). However, nothing in s 89(1)-(3) authorises the doing of any act in contravention of any prohibition or restriction having effect under any enactment or rule of law: s 89(4) (amended by the Local Authorities (Land) Act 1963 s 6(2); and the Countryside Act 1968 Sch 5).

10 See the National Parks and Access to the Countryside Act 1949 s 89(6) (s 89(5), (6) amended by the Local Authorities (Land) Act 1963 s 6(1)).

11 National Parks and Access to the Countryside Act 1949 s 89(5) (as amended: see note 10). As to the power of compulsory acquisition see PARA 668.

12 National Parks and Access to the Countryside Act 1949 s 101(7). However, an interest in Crown land may be acquired for the purposes of s 89 only with the consent of the appropriate authority; and if any land affected by the arrangements under s 89(3) (see the text and note 9) or an agreement under s 89(6) (see the text and note 10) becomes Crown land, the arrangements or agreement cease to apply to the land unless the appropriate authority consents to the continued application to it of the arrangements or agreement: s 101(7) (a), (b). As to the meaning of 'Crown land' see PARA 639 note 1. As to the meaning of 'appropriate authority' see PARA 639 note 2.

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648. Byelaws.

A local planning authority¹ may in respect of land² in its area belonging to it and comprised in a national park or an area of outstanding natural beauty³, or in respect of land or a waterway⁴ to which the public are given access⁵, make byelaws for the preservation of order, the prevention of damage and securing that visitors behave themselves so as to avoid undue interference with the enjoyment of land or waterways by others⁶. Without prejudice to the general power to make byelaws, they may be made:

- 173 (1) prohibiting or restricting the use of the land or waterway generally or in a specified manner by specified traffic⁷;
- 174 (2) prohibiting the deposit of rubbish or leaving of litter⁸;
- 175 (3) regulating or prohibiting the lighting of fires⁹; and
- 176 (4) so as to relate to the whole or different parts of the land or waterway concerned¹⁰.

Byelaws may also be made as to the conditions of use of parking places, and charges to be made for their use, and for prohibiting or restricting persons from plying for hire with vehicles at parking places¹¹.

A county or district council may enforce byelaws made under these provisions as respects its area¹². Byelaws apply to Crown land if the appropriate authority consents¹³, but they do not apply to Epping Forest or Burnham Beeches¹⁴.

If a local planning authority, when required by the Secretary of State or the Welsh Ministers to make byelaws, does not do so within three months to the satisfaction of the Secretary of State or the Welsh Ministers, he or they may make such byelaws¹⁵, which then have effect as if made by the authority and confirmed by the Secretary of State or the Welsh Ministers¹⁶.

1 As to the meaning of 'local planning authority' see PARA 636 note 12. The National Parks and Access to the Countryside Act 1949 s 90 does not apply to inner London boroughs or the City of London: London Government Act 1963 s 60(5) (amended by the Local Government Act 1985 Sch 17).

2 As to the meaning of 'land' see PARA 636 note 1. In the National Parks and Access to the Countryside Act 1949 ss 90-92, 'land' includes any path which is a means of access to land to which the public are given access by an agreement or order, or in consequence of acquisition, under Pt V (ss 59-83) (see PARA 581 et seq): Countryside Act 1968 s 41(10). 'Path' means a public path or restricted byway (see the Countryside and Rights of Way Act 2000; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 603) or any other path, not being a highway at the side of a public road, which the public have the right to use, or are permitted to use, as a means of access to land to which the public are given access under the National Parks and Access to the Countryside Act 1949 Pt V: Countryside Act 1968 s 41(11) (amended by the Countryside and Rights of Way Act 2000 Sch 5 para 14).

3 In relation to a national park or an area of outstanding natural beauty, the local planning authority must consult with Natural England (as regards land in England) or the Countryside Council for Wales (as regards land in Wales): National Parks and Access to the Countryside Act 1949 s 90(4) (amended by the Local Government Act 1972 Sch 17 para 39; the Environmental Protection Act 1990 Sch 8 para 1(1), (14); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 10(1)). As to national parks see PARA 636 et seq. As to areas of outstanding natural beauty see PARA 658 et seq. As to the Natural England and the Countryside Council for Wales see PARAS 523-524.

4 As to the meaning of 'waterway' see PARA 646 note 10.

5 le by an agreement or order, or in consequence of acquisition, under the National Parks and Access to the Countryside Act 1949 Pt V: see s 90(1).

6 National Parks and Access to the Countryside Act 1949 s 90(1). The Local Government Act 1972 ss 236-238 (which replace the Local Government Act 1933 ss 250-252 (repealed)) (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 556-559, 568, 570-571), relating to the procedure for making byelaws, authorising the imposition of fines and providing for the proof of byelaws in legal proceedings, are applicable to byelaws made under the National Parks and Access to the Countryside Act 1949 s 90: see s 106(1) (amended by the Environmental Protection Act 1990 Sch 9 para 1(5); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 15(h)). The confirming authority is the Secretary of State or the Welsh Ministers: National Parks and Access to the Countryside Act 1949 s 106(2). As to the Secretary of State and the Welsh Ministers see PARA 519. As to the power to make byelaws under the Countryside and Rights of Way Act 2000 s 17 see PARA 591.

7 National Parks and Access to the Countryside Act 1949 s 90(3)(a).

8 National Parks and Access to the Countryside Act 1949 s 90(3)(b).

9 National Parks and Access to the Countryside Act 1949 s 90(3)(c).

10 National Parks and Access to the Countryside Act 1949 s 90(3)(d). No byelaws may interfere with the exercise of any public right of way or with any authority having under any enactment functions relating to the land or waterway to which the byelaws apply or with the provision of an electronic communications code network or the exercise of any right conferred by or in accordance with the electronic communications code on the operator of any such network: Countryside Act 1968 s 41(12) (amended by the Telecommunications Act 1984 Sch 4 para 48(1); and the Communications Act 2003 Sch 17 para 40(1), (2)(b), (c)). As to electronic communications code networks see **TELECOMMUNICATIONS** vol 97 (2010) PARA 174. As to the electronic communications code see **TELECOMMUNICATIONS** vol 97 (2010) PARA 151 et seq. As to the meaning of 'operator' see **TELECOMMUNICATIONS** vol 97 (2010) PARA 174.

11 National Parks and Access to the Countryside Act 1949 s 90(5). This does not limit the general power of a local planning authority to make charges for any services or facilities provided by it under the National Parks and Access to the Countryside Act 1949: s 90(5). The functions of the local planning authority under s 90(5) are exercisable by the county planning authority: see the Local Government Act 1972 s 184(2). However, where a national park authority is the local planning authority for a national park, s 184 does not apply in relation to any functions conferred by or under the National Parks and Access to the Countryside Act 1949 (Environment Act 1995 s 68(1)); and the functions are the functions of the national park authority (see s 68(2); and PARA 644). As to national park authorities see PARA 526.

12 National Parks and Access to the Countryside Act 1949 s 90(6); Local Government Act 1972 s 179(3).

13 National Parks and Access to the Countryside Act 1949 s 101(8); Countryside Act 1968 s 47(7). As to the meaning of 'Crown land' see PARA 639 note 1; and as to the meaning of 'appropriate authority' see PARA 639 note 2.

14 See the National Parks and Access to the Countryside Act 1949 s 112 (amended by the Countryside and Rights of Way Act 2000 Sch 15 para 2).

15 See the National Parks and Access to the Countryside Act 1949 s 91(1). As respects a national park or area of outstanding natural beauty, the Secretary of State must consult with Natural England (as regards land or waterways in England) and the Welsh Ministers must consult the Countryside Council for Wales (as regards land or waterways in Wales): s 91(1) proviso (amended by the Environmental Protection Act 1990 Sch 8 para 1(1), (15); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 10(m)).

16 National Parks and Access to the Countryside Act 1949 s 91(2).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(1) NATIONAL PARKS/649. Byelaws for lakes.

649. Byelaws for lakes.

A local planning authority¹ whose area consists of or includes the whole or any part of a national park² may make byelaws for the prohibition or restriction of traffic of any description on any lake in the park³. The power is exercisable for the purposes of:

- 177 (1) ensuring the safety of persons resorting to the lake⁴;
- 178 (2) regulating all forms of sport or recreation involving the use of boats or vessels⁵;
- 179 (3) conserving the amenity and natural beauty of any such lake and the surrounding area⁶; and
- 180 (4) preventing nuisances or damage, particularly from excessive noise⁷.

Without prejudice to the generality of the above, byelaws may:

- 181 (a) prescribe rules of navigation and impose speed limits⁸;
- 182 (b) require the use of silencers on boats or vessels propelled by internal combustion engines, and prescribe rules as to limits on noise or vibration caused by them⁹;
- 183 (c) prohibit the use of boats or vessels not registered with the authority¹⁰;
- 184 (d) authorise making reasonable charges in respect of such registration¹¹; and
- 185 (e) make different provisions for different circumstances, and in particular impose different restrictions in different places and at different times or seasons¹².

Byelaws may not be made so as to extinguish any public right of way over any waters but, except as otherwise expressly provided, they apply to persons exercising public rights of way as they do to other persons¹³. Byelaws made by a local planning authority under these provisions may be enforced by any local authority for an area that includes any part of the national park in question¹⁴.

A local planning authority¹⁵ may make byelaws regulating the use of works carried out by a local planning authority in waters bounding a national park¹⁶ and of any facilities or services provided in connection with the works, but before making such byelaws it must consult Natural England (if the national park is in England) or the Countryside Council for Wales (if the national park is in Wales)¹⁷. The byelaws must not interfere with the exercise of any functions relating to the waters or land to which they apply which are exercisable by any authority under any enactment¹⁸.

1 As to the meaning of 'local planning authority' see PARA 636 note 12.

2 As to national parks see PARA 636 et seq. Byelaws made by a local planning authority under these provisions may be enforced by any local authority for an area that includes any part of the national park in question: Countryside Act 1968 s 13(12) (amended by the Environment Act 1995 Sch 10 para 8(3)). As to the meaning of 'local authority' see PARA 566 note 1.

3 Countryside Act 1968 s 13(1). 'Lake' includes any expanse of water other than a river or canal (s 13(13)), but these provisions do not apply to any lake owned or managed by any statutory undertakers (s 13(7) (amended by the Water Act 1989 Sch 25 para 37(3))). 'Statutory undertakers' has the meaning assigned to it by the Town and Country Planning Act 1990 s 262 (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA

1009): see the Countryside Act 1968 s 49(1); the National Parks and Access to the Countryside Act 1949 s 114(1) (which refers to the Town and Country Planning Act 1947 (repealed)); and the Planning (Consequential Provisions) Act 1990 s 2(4).

In acting under the Countryside Act 1968 s 13, the local planning authority must have regard to the provisions of the National Parks and Access to the Countryside Act 1949 s 5 (see PARA 636), and must consult Natural England (if the national park is in England) or the Countryside Council for Wales (if the national park is in Wales) before making byelaws: Countryside Act 1968 s 13(4) (amended by the Environmental Protection Act 1990 Sch 8 para 2(1), (7); and the Natural Environment Rural Communities Act 2006 Sch 11 para 47). The National Parks and Access to the Countryside Act 1949 s 5(1) applies where a national park authority has become a local planning authority, otherwise s 5(1) (as originally enacted) still applies: see the Environment Act 1995 s 61(2)-(5). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

4 Countryside Act 1968 s 13(2)(a).

5 Countryside Act 1968 s 13(2)(b). 'Boat' includes any hover vehicle or craft designed to be supported on a cushion of air, used on or over the water: s 49(2).

6 Countryside Act 1968 s 13(2)(c). As to the conservation or preservation of natural beauty see PARA 636 note 5.

7 Countryside Act 1968 s 13(2)(d). As to the enforcement of these byelaws by wardens see PARA 650 note 10.

8 Countryside Act 1968 s 13(3)(a).

9 Countryside Act 1968 s 13(3)(b).

10 Countryside Act 1968 s 13(3)(c).

11 Countryside Act 1968 s 13(3)(d).

12 Countryside Act 1968 s 13(3)(e).

13 Countryside Act 1968 s 13(5). This provision applies except as otherwise expressly provided. Byelaws are of no effect if and so far as inconsistent with rules under the Merchant Shipping Act 1995 that apply to waters to which the byelaws apply: Countryside Act 1968 s 13(6)(a) (amended by the Merchant Shipping Act 1995 Sch 13 para 41). As to rules under the Merchant Shipping Act 1995 see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 41. Byelaws must not interfere with any functions relating to the water or land to which the byelaws apply which are exercisable by any authority under any enactment: Countryside Act 1968 s 13(6)(b). The provisions of the National Parks and Access to the Countryside Act 1949 s 106 (see PARA 648) have effect as if byelaws made under these provisions were made under that Act: Countryside Act 1968 s 13(8).

14 Countryside Act 1968 s 13(12) (as amended: see note 2).

15 The functions conferred by or under the Countryside Act 1968 s 12 which are exercisable by virtue of the Environment Act 1995 s 68 by a national park authority in a national park are exercisable by that authority outside the relevant park on any land in the neighbourhood of that park; but are so exercisable only under arrangements made with the local planning authority for the area where they are exercised: s 68(4).

16 le under the Countryside Act 1968 s 12(3) (see PARA 646): s 12(5) (amended by the Environmental Protection Act 1990 Sch 8 para 2(1), (6); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 46(1), (3)).

17 Countryside Act 1968 s 12(5) (as amended: see note 16).

18 Countryside Act 1968 s 12(5) proviso. The National Parks and Access to the Countryside Act 1949 s 106 has effect as if byelaws under this provision were byelaws under that Act: Countryside Act 1968 s 12(5) (as amended: see note 16).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(1) NATIONAL PARKS/650. Wardens.

650. Wardens.

A local authority¹ may appoint such number of persons as may appear to it to be necessary or expedient to act as wardens as respects any land or waterway² in relation to which byelaws made by the authority are in force³ or in relation to which the authority has power to make such byelaws⁴. The purposes for which wardens may be appointed are:

- 186 (1) to secure compliance with any byelaws, provisions relating to litter⁵ and requirements imposed by provisions relating to commons and waste land⁶;
- 187 (2) to advise and assist the public⁷; and
- 188 (3) to perform such duties in relation to the land or waters as the authority may determine⁸.

For the purpose of exercising any functions conferred on him under these provisions, a warden may enter upon any land or go on any waterway comprised in an access agreement or order⁹. Subject to that, these provisions do not authorise a warden to do anything which apart from these provisions would be actionable at the suit of a person other than the authority who has an interest in the land or waterway by virtue of that interest¹⁰.

For the purpose of exercising his functions, a warden may also enter upon land or go on any waterway as respects which local authority byelaws are in force¹¹ even if the land or waterway does not belong to the local authority, Natural England or the Countryside Council for Wales¹².

A local planning authority¹³ whose area consists of or includes the whole or part of a national park¹⁴ may appoint such number of persons as may appear to the authority to be necessary or expedient to act as wardens as respects certain common land within the park¹⁵. If practicable the person entitled to the soil of the land must first be consulted¹⁶.

In relation to any land in a national park or in the countryside to which the public are allowed access, if there is no power under any of the provisions of the National Parks and Access to the Countryside Act 1949 or the Countryside Act 1968 for a local authority, a local planning authority, Natural England or the Countryside Council for Wales to appoint wardens as respects that land, the power described above includes a power, exercisable only with the agreement of the owner and of the occupier of any such land, to appoint persons to act as wardens as respects that land¹⁷. The only purpose for which wardens may be appointed under this provision is to advise and assist the public¹⁸.

1 As to the meaning of 'local authority' see PARA 636 note 10. The powers conferred on the local authority by or under the National Parks and Access to the Countryside Act 1949 s 92 in relation to functions which are functions of a national park authority are exercisable by that authority and not by any other authority: see the Environment Act 1995 s 68(8). As to national park authorities see PARA 526.

2 As to the meaning of 'land' see PARA 648 note 2; and as to the meaning of 'waterway' see PARA 646 note 10.

3 I.e. under the National Parks and Access to the Countryside Act 1949 s 90 (see PARA 648). The power for local authorities to make byelaws was provided by s 90(2), which was repealed by the Local Government Act 1972 Sch 17 para 39. Local authorities may make byelaws under the Countryside Act 1968 s 41: see PARA 648.

4 National Parks and Access to the Countryside Act 1949 s 92(1).

5 I.e. the Environmental Protection Act 1990 s 87 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 721); Countryside Act 1968 s 42(4)(a) (amended by the Environmental Protection Act 1990 Sch 15

para 11). As to the control of litter generally see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 717 et seq.

6 le the Law of Property Act 1925 s 193 (see **COMMONS** vol 13 (2009) PARA 581): Countryside Act 1968 s 42(4) (a) (as amended: see note 5).

7 Countryside Act 1968 s 42(4)(b).

8 Countryside Act 1968 s 42(4)(c).

9 National Parks and Access to the Countryside Act 1949 s 92(3). The agreement or order referred to in the text is the agreement or order in force under Pt V (ss 59-83) (see PARA 581 et seq): s 92(3). This provision does not confer any power of entry on land which is excepted land for the purposes of Pt V: s 92(3) proviso.

10 National Parks and Access to the Countryside Act 1949 s 92(4). The provisions of s 92(1), (4) have effect as if the power of making byelaws conferred by the Countryside Act 1968 s 13 (see PARA 649) was contained in the National Parks and Access to the Countryside Act 1949 s 90 (see PARA 648): Countryside Act 1968 s 13(9). For the purpose of securing compliance with byelaws made under s 13, a warden appointed under the National Parks and Access to the Countryside Act 1949 s 92 may enter upon or go on any water, whether or not within the area where the byelaws are in force: Countryside Act 1968 s 13(10).

11 le under the Countryside Act 1968 s 41 (see PARA 566).

12 Countryside Act 1968 s 41(9) (amended by the Environmental Protection Act 1990 Sch 8 para 2(1), (10); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 53(1), (3)). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

13 As to the meaning of 'local planning authority' see PARA 636 note 12.

14 As to national parks see PARA 636 et seq.

15 Countryside Act 1968 s 42(1) (amended by the Environment Act 1995 Sch 24). The common land referred to in the text is land to which the Law of Property Act 1925 s 193 (see note 6) applies: see the Countryside Act 1968 s 42(1).

16 Countryside Act 1968 s 42(2). These provisions must be construed as one with the National Parks and Access to the Countryside Act 1949 s 92, and are subject to s 92(4) (see the text and note 10): Countryside Act 1968 s 42(3).

17 Wildlife and Countryside Act 1981 s 49(1), (2) (s 49(1) amended by the Environmental Protection Act 1990 Sch 8 para 6(1), (6); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 93(a)).

18 Wildlife and Countryside Act 1981 s 49(3). Although Natural England and the Countryside Council for Wales are local authorities for the purposes of the National Parks and Access to the Countryside Act 1949 s 92 (see the Countryside Act 1968 s 41(8); and PARA 566), the Wildlife and Countryside Act 1981 s 49 does not confer on them any additional power to appoint new wardens: s 49(4) (amended by the Environmental Protection Act 1990 Sch 8 para 6(1), (6); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 93(b)).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(1) NATIONAL PARKS/651. Appropriation and disposal of land.

651. Appropriation and disposal of land.

If a local authority¹ has acquired land² under the National Parks and Access to the Countryside Act 1949, or appropriated land for purposes for which land can be acquired under that Act, and the land was acquired or appropriated for a purpose involving its disposal or for a purpose which, in the authority's opinion, can best be achieved by its disposal, then the authority may³ dispose⁴ of the land to such person and in such manner and subject to such conditions as may appear to it to be expedient in order to secure that it will be best dealt with having regard to the purpose for which it was acquired⁵. Where any land so acquired or appropriated is no longer required by the authority for the purpose for which it is held, the authority may dispose of it to such person and in such manner and subject to such conditions as appear to the authority expedient, having regard to its nature and situation, in order to secure its best use⁶, or the authority may appropriate the land for any other purpose for which it is authorised in any capacity to acquire land⁷.

Capital money received by a local authority as the result of a disposal of land under these powers must be applied in such manner as the Secretary of State may approve towards the discharge of any debt of the local authority or for any purpose for which capital money may be properly applied⁸.

These express powers of disposal and appropriation take effect to the exclusion of the general powers conferred upon local authorities for these purposes⁹.

1 As to the meaning of 'local authority' see PARA 636 note 10. The National Parks and Access to the Countryside Act 1949 s 104 (except s 104(11): see the text and note 8) has effect as if references to a local authority included references to a national park authority: see the Environment Act 1995 s 68(9); and PARA 644. As to national park authorities see PARA 526.

2 As to the meaning of 'land' see PARA 636 note 1.

3 The consent of the Minister of Housing and Local Government was required to any appropriation or disposal of land by a local authority under the National Parks and Access to the Countryside Act 1949 s 104: see s 104(5), (6). The functions of the Minister of Housing and Local Government have been transferred to the Secretary of State or the Welsh Ministers: see PARA 519. However, the consent of the Secretary of State or the Welsh Ministers is no longer required in any case, but where land is open space, not being land which consists or forms part of a common or of a fuel or field garden allotment, the local authority must publish certain information and consider any objections made: see the Town and Country Planning Act 1959 ss 23(2), 26(2) (substituted by the Local Government, Planning and Land Act 1980 Sch 23 paras 3-7); and the Town and Country Planning Act 1959 s 26(5)(c) (substituted by the Planning (Consequential Provisions) Act 1990 Sch 2 para 6).

4 'Disposal of land' means a disposal in any manner, otherwise than by appropriation, whether by sale, exchange or lease, by the creation of any easement, right or privilege or in any manner, except by way of gift, mortgage or charge: National Parks and Access to the Countryside Act 1949 s 104(9).

5 National Parks and Access to the Countryside Act 1949 s 104(1), (2)(a). As to the disposal of housing in national parks see **HOUSING** vol 22 (2006 Reissue) PARA 112; **LANDLORD AND TENANT** vol 27(3) (2006 Reissue) PARA 1899.

6 National Parks and Access to the Countryside Act 1949 s 104(1), (2)(b).

7 National Parks and Access to the Countryside Act 1949 s 104(3). As to consent to appropriation see note 3. The Local Government Act 1972 s 122(4) (which relates to the operation of the Lands Clauses Consolidation Act 1845 s 68 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 718, 878), and to adjustments in

accounts) applies to appropriations under the National Parks and Access to the Countryside Act 1949 s 104(3); s 104(4) (amended by the London Government Act 1963 Sch 18).

8 See the National Parks and Access to the Countryside Act 1949 s 104(11) (amended by the London Government Act 1963 Sch 18). See also note 1.

9 See the National Parks and Access to the Countryside Act 1949 s 104(10) (amended by the London Government Act 1963 Sch 18). See also the Local Government Act 1972 ss 122, 123, 272(2); and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 513, 515, 518, 520.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(1) NATIONAL PARKS/652. National park authorities' power to issue levies.

652. National park authorities' power to issue levies.

A national park authority¹ has power in respect of every financial year² beginning after its establishment to issue levies to the councils by whom the local authority members³ of the national park authority fall to be appointed⁴.

1 As to national park authorities see PARA 526.

2 'Financial year' means a period of 12 months ending with 31 March: Environment Act 1995 s 124(1).

3 As to local authority members see PARA 523-524.

4 Environment Act 1995 s 71(1). A levy issued by virtue of s 71(1) must be issued in accordance with the Local Government Finance Act 1988 s 74 (see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 530): Environment Act 1995 s 71(2). As to the amount of levies to be issued by national park authorities in respect of a financial year see s 71(3)-(7). As to the issue of levies by national park authorities in England to meet their expenses in respect of financial years beginning on or after 1 April 1997 see the National Park Authorities (Levies) (England) Regulations 1996, SI 1996/2794 (amended by SI 1996/2976; SI 1998/1129; SI 2001/3649). As to the issue of levies by national park authorities in Wales to meet their expenses in respect of financial years beginning on or after 1 April 1996 see the National Park Authorities (Levies) (Wales) Regulations 1995, SI 1995/3019 (amended by SI 1996/2913; SI 1998/1129; SI 2001/429; SI 2001/3649).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(1) NATIONAL PARKS/653. National park grant.

653. National park grant.

The Secretary of State or the Welsh Ministers¹ may make grants to a national park authority² for such purposes, of such amounts and on such terms and conditions as he thinks or they think fit³. Before the amount of any grant is determined, Natural England or the Countryside Council for Wales must be consulted, according to whether the relevant park⁴ is in England or Wales⁵.

1 As to the Secretary of State and the Welsh Ministers see PARA 519.

2 As to national park authorities see PARA 526.

3 Environment Act 1995 s 72(1).

4 As to the meaning of 'relevant park' see PARA 642 note 2.

5 Environment Act 1995 s 72(2) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 144). As to Natural England and the Countryside Council for Wales see PARAS 523-524. As to the need for Treasury consent see the Environment Act 1995 s 72(3).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(1) NATIONAL PARKS/654. Validation of grants paid in respect of expenditure relating to national parks.

654. Validation of grants paid in respect of expenditure relating to national parks.

No payment made for any year¹ beginning on or after 1 April 1990 and ending on or before 31 March by way of grant to the council of a county or a metropolitan district² in respect of the council's expenditure or estimated expenditure in connection with national parks³ is to be regarded as made otherwise than under and in accordance with the relevant enactments⁴ by reason only of:

- 189 (1) the aggregate amount of such grants for the year to such councils not having been duly prescribed⁵;
- 190 (2) the method of determining the proportion of such aggregate amount payable to that council not having been duly prescribed⁶; or
- 191 (3) payment of the grant being, or having been, made: (a) otherwise than in accordance with an approved rate support grant report⁷ or such a report as varied by an approved supplementary report⁸ for the year; or (b) without there being an approved rate support grant report for the year⁹.

1 'Year' means a period of 12 months beginning with 1 April: Environment Act 1995 s 74(3).

2 As to counties in England and their councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 24 et seq. As to counties in Wales and their councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 37 et seq. Metropolitan county councils were abolished on 1 April 1986 by the Local Government Act 1985 s 1 but the metropolitan counties themselves have not been abolished. As to local government generally see **LOCAL GOVERNMENT** vol 69 (2009) PARA 1 et seq; **LONDON GOVERNMENT**.

3 As to national parks see PARA 636 et seq.

4 A payment by way of grant made under and in accordance with the relevant enactments means a payment of grant made under the Local Government Act 1974 s 7 (repealed) (supplementary grants towards expenditure with respect to national parks) in accordance with the provisions of s 7 (repealed), or the Local Government, Planning and Land Act 1980 ss 60, 61 (repealed) (rate support grant reports and supplementary reports) as they applied in relation to grants under the Local Government Act 1974 s 7 (repealed): Environment Act 1995 s 74(2). Rate support grant was abolished in respect of financial years beginning in or after 1990 (see the Local Government Finance Act 1988 s 124(1)) and replaced by revenue support grant payable under Pt V (ss 76-88B): see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 531 et seq.

5 Environment Act 1995 s 74(1)(a). 'Duly prescribed' means prescribed by a rate support grant report or a supplementary report: s 74(3). 'Rate support grant report' means a rate support grant report made under the Local Government, Planning and Land Act 1980 s 60 (repealed): Environment Act 1995 s 74(3). 'Supplementary report' means a supplementary report made under the Local Government, Planning and Land Act 1980 s 61 (repealed): Environment Act 1995 s 74(3). See also note 4.

6 Environment Act 1995 s 74(1)(b).

7 'Approved rate support grant report' means a rate support grant report which has been laid before and approved by a resolution of the House of Commons: Environment Act 1995 s 74(3). See also note 4.

8 'Approved supplementary report' means a supplementary report which has been laid before and approved by a resolution of the House of Commons: Environment Act 1995 s 74(3). See also note 4.

9 Environment Act 1995 s 74(1)(c).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(1) NATIONAL PARKS/655. Grants and loans for national parks.

655. Grants and loans for national parks.

The national park authority¹ for a park may give financial assistance by way of grant or loan, or partly in one way and partly in the other, to any person in respect of expenditure incurred by him in doing anything which in the authority's opinion is conducive to the attainment, in the national park in question, of the purposes of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area, and promoting opportunities for the understanding and enjoyment of the special qualities of the area by the public².

On making such a grant or loan the authority in question may impose such conditions as it thinks fit, including in the case of a grant conditions for repayment in specified circumstances³. The authority must exercise this power⁴ so as to ensure that any person receiving a grant or loan in respect of premises to which the public are to be admitted (whether on payment or otherwise) makes provision, so far as practicable and reasonable, in the means of access both to and within the premises, and in the parking facilities and sanitary conveniences, for the needs of visiting members of the public who are disabled⁵.

1 As to national park authorities see PARA 526. For the purposes of the Wildlife and Countryside Act 1981 s 44, the Broads Authority is to be treated as a national park authority and the Broads as a national park for which it is the local planning authority: s 44(4) (added by the Norfolk and Suffolk Broads Act 1988 Sch 3 para 31(4); and amended by the Environment Act 1995 Sch 24). As to the Broads Authority see PARA 531; and **WATER AND WATERWAYS** vol 101 (2009) PARA 734. As to national park authorities see PARA 526; and as to national park authorities as local planning authorities see PARA 644.

2 Wildlife and Countryside Act 1981 s 44(1A) (added by the Environment Act 1995 s 69(4); and amended by Sch 24). As to the conservation or preservation of natural beauty see PARA 636 note 5.

3 Wildlife and Countryside Act 1981 s 44(2) (amended by the Environment Act 1995 Sch 10 para 22(4)(a)).

4 Ie under the Wildlife and Countryside Act 1981 s 44(2).

5 Wildlife and Countryside Act 1981 s 44(3) (amended by the Environment Act 1995 Sch 10 para 22(4)(b)).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(1) NATIONAL PARKS/656. Expenses.

656. Expenses.

The expenses of the Secretary of State or the Welsh Ministers¹ under the National Parks and Access to the Countryside Act 1949, the Countryside Act 1968 and the Wildlife and Countryside Act 1981, and any increase attributable to the provisions of those Acts in the sums payable out of money provided by Parliament under any other Act, must be defrayed out of money provided by Parliament².

¹ The National Parks and Access to the Countryside Act 1949 s 100 refers to the Minister of Town and Country Planning and the Minister of Agriculture, Fisheries and Food. The functions of the Minister of Town and Country Planning and the Minister of Agriculture, Fisheries and Food have been transferred to the Secretary of State or the Welsh Ministers: see PARA 519.

² National Parks and Access to the Countryside Act 1949 s 100 (amended by the Science and Technology Act 1965 Sch 4; and SI 1955/554); Countryside Act 1968 s 48(1); Wildlife and Countryside Act 1981 s 70(1). There must be paid into the Exchequer any sums required to be so paid in consequence of any of the provisions of the Countryside Act 1968: s 48(2). Any sums received by a Minister of the Crown under the Wildlife and Countryside Act 1981 must be paid into the Consolidated Fund: Wildlife and Countryside Act 1981 s 70(2). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(1) NATIONAL PARKS/657. Contributions by local authorities.

657. Contributions by local authorities.

A local authority¹ may defray, or contribute towards, the expenditure incurred for the purposes of the National Parks and Access to the Countryside Act 1949 by any other local authority². Where the Secretary of State directs or the Welsh Ministers³ direct that the power of a local planning authority of doing work for the improvement of a waterway should be exercised by some other authority⁴, this power to make contributions applies to that other authority as if it were a local authority and, if the direction so provides, it is the duty of the local planning authority to defray, or contribute towards, the expenses of that other authority to the extent specified⁵.

1 'Local authority', for these purposes, means a local planning authority, the council of a county not being a local planning authority or the council of a county district: National Parks and Access to the Countryside Act 1949 s 99(2) (amended by the Local Government Act 1972 Sch 30). As to the meaning of 'local planning authority' see PARA 636 note 12.

2 National Parks and Access to the Countryside Act 1949 s 99(1). The provisions of s 99(1) apply to the provisions of the Countryside Act 1968: s 46(1).

3 The National Parks and Access to the Countryside Act 1949 refers to the Minister of Town and Country Planning (see ss 99, 114(1)), whose functions have been transferred to the Secretary of State or the Welsh Ministers: see PARA 519.

4 Ie under the National Parks and Access to the Countryside Act 1949 s 13(4) (see PARA 646): s 99(3). As to the meaning of 'waterway' see PARA 646 note 10.

5 National Parks and Access to the Countryside Act 1949 s 99(3). As to contributions towards the expenses of a water authority see PARA 665. The functions of the local planning authority under s 99(3) are exercisable by the county planning authority: see the Local Government Act 1972 s 184(2). However, where a national park authority is the local planning authority for a national park, s 184 does not apply in relation to any functions conferred by or under the National Parks and Access to the Countryside Act 1949 (Environment Act 1995 s 68(1)); and the functions are the functions of the national park authority (see s 68(2); and PARA 644). As to national park authorities see PARA 526.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(2) AREAS OF OUTSTANDING NATURAL BEAUTY/658. Making of orders.

(2) AREAS OF OUTSTANDING NATURAL BEAUTY

658. Making of orders.

Where it appears to Natural England or to the Countryside Council for Wales¹ that an area which is in England or, as the case may be, Wales but not in a national park is of such outstanding natural beauty² that it is desirable that the provisions relating to designated areas³ should apply to it, Natural England or, as the case may be, the Council may, for the purpose of conserving and enhancing the natural beauty of the area, by order designate the area⁴ as an area of outstanding natural beauty⁵.

Where Natural England or the Council proposes to make such an order, it must consult every local authority⁶ whose area includes any part of the area to which the proposed order is to relate⁷.

Before making such an order, Natural England or the Council must publish, in the London Gazette and in one or more newspapers circulating in the area of every such local authority, notice that it proposes to make the order, indicating the effect of the order and stating the time within which and manner in which representations with respect to the proposed order may be made; and it must consider any representations duly made⁸.

Such an order will not come into operation unless and until confirmed, in the case of an order made by Natural England, by the Secretary of State or, in the case of an order made by the Council, by the Welsh Ministers; and, in submitting any such order to the Secretary of State or the Welsh Ministers, Natural England or the Council must forward to the Secretary of State or the Welsh Ministers any representations made by a consulted local authority⁹ or made by any other person¹⁰, other than representations to which effect is given by the order as submitted to the Secretary of State or the Welsh Ministers¹¹.

Before refusing to confirm an order, or determining to confirm it with modifications, the Secretary of State must consult Natural England, or the Welsh Ministers must consult the Council; and every local authority whose area includes any land to which the order as submitted, or as proposed to be modified, relates must also be consulted¹².

Such an order may be revoked or varied by a subsequent order¹³.

It is the duty of Natural England or the Council to secure that copies of any such order relating to England or, as the case may be, to Wales, are available for inspection by the public at all reasonable times: (1) at the office of Natural England or, as the case may be, the Council¹⁴; (2) at the offices of each local authority whose area includes any part of the area to which the order relates¹⁵; and (3) at such other place or places in or near that area as Natural England or, as the case may be, the Council may determine¹⁶.

1 As to Natural England and the Countryside Council for Wales see PARAS 523-524.

2 For these purposes, 'area of outstanding beauty' means an area designated under the Countryside and Rights of Way Act 2000 s 82 as an area of outstanding natural beauty: s 82(3).

3 I.e. areas designated under the Countryside and Rights of Way Act 2000 s 82.

4 I.e. for the purposes of the Countryside and Rights of Way Act 2000 Pt IV (ss 82-93).

5 Countryside and Rights of Way Act 2000 s 82(1), (2) (s 82(1) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 163).

6 'Local authority', for the purposes of the Countryside and Rights of Way Act 2000 Pt IV, means a principal council within the meaning of the Local Government Act 1972 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 23): Countryside and Rights of Way Act 2000 s 92(1).

7 Countryside and Rights of Way Act 2000 s 83(1) (s 83 amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 164(a)). Without prejudice to the powers of Natural England or the Council to vary an order under the Countryside and Rights of Way Act 2000 s 82, the Secretary of State, as respects England, or the Welsh Ministers, as respects Wales, may by order vary any order under s 82 (see the text and notes 1-5) made by Natural England or the Council; and s 83(1) applies to any order under s 82 made by the Secretary of State or the Welsh Ministers by virtue of s 83(8) with the substitution for references to Natural England of references to the Secretary of State and for references to the Council of references to the Welsh Ministers: s 83(8).

8 Countryside and Rights of Way Act 2000 s 83(2) (as amended: see note 7).

9 Ie a local authority consulted under the Countryside and Rights of Way Act 2000 s 83(1) (see the text and note 7).

10 Ie made by any other person under the Countryside and Rights of Way Act 2000 s 83(2) (see the text and note 7).

11 Countryside and Rights of Way Act 2000 s 83(3) (as amended: see note 7). The Secretary of State or the Welsh Ministers may confirm an order submitted to him or them either as submitted or with such modifications as he thinks or they think expedient: s 83(4) (as so amended).

12 Countryside and Rights of Way Act 2000 s 83(5), (6) (as amended: see note 7).

13 Countryside and Rights of Way Act 2000 s 83(7) (as amended: see note 7).

14 Countryside and Rights of Way Act 2000 s 83(9)(a) (as amended: see note 7).

15 Countryside and Rights of Way Act 2000 s 83(9)(b) (as amended: see note 7).

16 Countryside and Rights of Way Act 2000 s 83(9)(c) (as amended: see note 7).

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659. Effect of orders.

The following provisions are applicable to an area designated as of outstanding natural beauty¹ in the same way as they apply to a national park²:

- 192 (1) it is the duty of Natural England (in relation to England) and the Countryside Council for Wales (in relation to Wales)³ to give advice to any minister or to the appropriate planning authority⁴ in connection with the preparation or amendment of a development plan⁵;
- 193 (2) in the preparation of a development plan, or proposals for alterations or additions to a development plan, the authority or authorities required to prepare, alter or add to the plan must consult with Natural England or, as the case may be, the Council⁶;
- 194 (3) before making an access order⁷ in respect of land so designated, the local planning authority must consult with Natural England or, as the case may be, the Council and, in certain circumstances, Natural England or the Council may request the authority to make such an order⁸.

A local planning authority whose area consists of or includes the whole or any part of an area of outstanding natural beauty has power⁹ to take all such action as appears to it expedient for the accomplishment of the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty or so much of it as is included in its area¹⁰.

In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority¹¹ must have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty¹².

1 See PARA 658 et seq.

2 See the Countryside and Rights of Way Act 2000 s 84(1) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 164(b)). As to national parks see PARA 636 et seq.

3 See the National Parks and Access to the Countryside Act 1949 s 4A (added by the Environmental Protection Act 1990 Sch 8 para 1(1), (4); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 9); and the Countryside and Rights of Way Act 2000 s 84(2). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

4 For these purposes, 'appropriate planning authority' means a local planning authority whose area consists of or includes the whole or any part of an area of outstanding natural beauty and includes a local authority, not being a local planning authority, by whom any powers of a local planning authority as respects an area of outstanding natural beauty are exercisable, whether under the National Parks and Access to the Countryside Act 1949 or otherwise: Countryside and Rights of Way Act 2000 s 84(2). As to the meaning of 'local planning authority' see PARA 636 note 12. As to the meaning of 'local authority' see PARA 658 note 6.

5 See the National Parks and Access to the Countryside Act 1949 s 6(4)(e); and PARAS 523-524, 645.

6 See the National Parks and Access to the Countryside Act 1949 s 9; and PARA 636.

7 As to access orders see PARA 616 et seq.

8 See the National Parks and Access to the Countryside Act 1949 s 65(5), (5A); and PARA 616.

9 le subject to the Countryside and Rights of Way Act 2000 s 84(5), (6): see note 10.

10 Countryside and Rights of Way Act 2000 s 84(4). Nothing in Pt IV (ss 82-93) is to be taken to limit the generality of s 84(4); but in so far as the provisions of Pt IV or the National Parks and Access to the Countryside Act 1949 confer specific powers falling within the Countryside and Rights of Way Act 2000 s 84(4), those powers are to be exercised in accordance with those provisions and subject to any limitations expressed or implied in them: s 84(5). Without prejudice to the powers conferred by Pt IV, s 84(4) has effect only for the purpose of removing any limitation imposed by law on the capacity of a local planning authority by virtue of its constitution, and does not authorise any act or omission on the part of such an authority which apart from s 84(4) would be actionable at the suit of any person on any ground other than such a limitation: s 84(6).

11 For these purposes, 'relevant authority' means any Minister of the Crown, any public body, any statutory undertaker or any person holding public office: Countryside and Rights of Way Act 2000 s 85(2). 'Public body' means a county council, county borough council, district council, parish council or community council, a joint planning board within the meaning of the Town and Country Planning Act 1990 s 2 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 30), and a joint committee appointed under the Local Government Act 1972 s 102(1)(b) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 371): Countryside and Rights of Way Act 2000 s 85(3). 'Public office' means an office under Her Majesty, an office created or continued in existence by a public general Act, or an office the remuneration in respect of which is paid out of money provided by Parliament: s 85(3). 'Statutory undertaker' means a person who is or is deemed to be a statutory undertaker for the purposes of any provision of the Town and Country Planning Act 1990 Pt XI (ss 262-283) (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1009 et seq): Countryside and Rights of Way Act 2000 s 85(3) (definition added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 165).

12 Countryside and Rights of Way Act 2000 s 85(1).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(2) AREAS OF OUTSTANDING NATURAL BEAUTY/660. Formation of conservation boards.

660. Formation of conservation boards.

The Secretary of State¹, in relation to England, or the Welsh Ministers², in relation to Wales, may in the case of any existing area of outstanding natural beauty³, or in connection with the designation of any area as an area of outstanding natural beauty⁴, by order establish a conservation board to carry out in relation to that area the functions conferred on such a board⁵. Where the Secretary of State considers or the Welsh Ministers consider it expedient, such an order may provide for the transfer to the conservation board to which the order relates of any of the functions of local authorities⁶, so far as relating to the area of outstanding natural beauty in question, or provide for any function of a local authority, so far as relating to the area of outstanding natural beauty in question, to be exercisable concurrently by the local authority and by the conservation board⁷.

Before making an order in relation to an area of outstanding natural beauty in England the Secretary of State must consult Natural England⁸, and before making an order in relation to an area of outstanding natural beauty in Wales the Welsh Ministers must consult the Countryside Council for Wales⁹; and the Secretary of State and the Welsh Ministers must also consult every local authority whose area consists of or includes the whole or part of the area of outstanding natural beauty and must not make the order unless satisfied that the majority of those local authorities consent¹⁰.

Where there is a variation of the area of an area of outstanding natural beauty for which there is or is to be a conservation board, the area of outstanding natural beauty for which that board is or is to be the conservation board is to be taken, as from the time when the variation takes effect, to be that area as varied¹¹.

1 As to the Secretary of State see PARA 519.

2 As to the Welsh Ministers see PARA 519.

3 As to the meaning of 'area of outstanding natural beauty' see PARA 658.

4 See PARA 658 et seq.

5 Countryside and Rights of Way Act 2000 s 86(1). Such an order may: (1) make further provision with respect to the supplemental and incidental powers of the conservation board to which it relates or the limits on those powers, including provision relating to the borrowing of money (s 87(7)(a)); and (2) provide for any enactment which relates to or limits the supplemental or incidental powers or duties of local authorities or relates to the conduct of, or transactions by, local authorities to apply in relation to the conservation board with such modifications as may be specified in the order (s 87(7)(b)). As to the power to make orders under s 86(1), (10) (see note 11) see s 88.

Such an order may also make further provision as to the constitution and administration of the conservation board to which it relates, including provision with respect to: (a) the appointment of members; (b) the removal and disqualification of members; (c) the conduct of members; (d) proceedings of the board; (e) the appointment of staff; (f) consultation with other public bodies; (g) records and documents of the board; (h) the provision of information by the board; and (i) complaints of maladministration: s 86(5).

The Secretary of State (as respects England) or the Welsh Ministers (as respects Wales) may make grants to a conservation board, of such amounts and on such terms and conditions as the Secretary of State thinks or the Welsh Ministers think fit: s 91(1). Before determining the amount of any grant which he proposes or they propose to make to a conservation board under this provision, or the purpose for which the grant is to be made, the Secretary of State must consult Natural England and the Welsh Ministers must consult the Countryside Council for Wales: s 91(2), (3) (s 91(2) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 164(e)).

Provision is made by Countryside and Rights of Way Act 2000 Sch 13 (i) that a conservation board is a body corporate (Sch 13 para 2); (ii) for the constitution of conservation boards (Sch 13 para 3); (iii) for local authority members (Sch 13 para 4); (iv) in relation to England, for parish members (Sch 13 para 5); (v) for the appointment of members (Sch 13 para 6); and (vi) for the chairman and deputy chairman (Sch 13 para 7).

6 As to the meaning of 'local authority' see PARA 658 note 6.

7 Countryside and Rights of Way Act 2000 s 86(3). This does not apply to functions of a local authority under the Town and Country Planning Act 1990 Pt III (ss 55-106) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 217 et seq), Pt VII (ss 171A-196C) (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 551 et seq) or Pt XIII (ss 292A-302) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 14), or under the Planning and Compulsory Purchase Act 2004 Pt 2 (ss 13-37) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 89 et seq) or Pt 6 (ss 60-78) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 133 et seq): Countryside and Rights of Way Act 2000 s 86(4) (amended by the Planning and Compulsory Purchase Act 2004 Sch 7 para 23, Sch 9).

8 As to Natural England see PARA 523.

9 As to the Countryside Council for Wales see PARA 524.

10 Countryside and Rights of Way Act 2000 s 86(6), (7) (s 86(6) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 164(c)). An order which amends or revokes a previous order establishing a conservation board may be made only after consultation with the conservation board to which it relates (as well as the consultation required by the Countryside and Rights of Way Act 2000 s 86(6), (7)) and, in the case of an order revoking a previous order, may provide for the winding up of the board: s 86(8).

11 Countryside and Rights of Way Act 2000 s 86(9). This provision is subject to any order under s 86(10), which provides that where provision is made for the variation of the area of an area of outstanding natural beauty for which there is or is to be a conservation board, the Secretary of State (as respects England) or the Welsh Ministers (as respects Wales) may by order make such transitional provision as he thinks or they think fit with respect to: (1) any functions which, in relation to any area that becomes part of the area of outstanding natural beauty, are by virtue of the variation to become functions of that conservation board (s 86(10)(a)); and (2) any functions which, in relation to any area that ceases to be part of the area of outstanding natural beauty, are by virtue of the variation to become functions of a person other than that conservation board (s 86(10)(b)). See note 5.

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661. Duties and powers of conservation boards.

It is the duty of a conservation board¹, in the exercise of its functions, to have regard to:

- 195 (1) the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty²; and
- 196 (2) the purpose of increasing the understanding and enjoyment by the public of the special qualities of the area of outstanding natural beauty³,

but if it appears to the board that there is a conflict between those purposes, it is to attach greater weight to the purpose mentioned in head (1)⁴. General duties as to the protection of interests of the countryside and the avoidance of pollution⁵ apply to conservation boards as they apply to local authorities⁶.

While having regard to these purposes, a conservation board must seek to foster the economic and social well-being of local communities within the area of outstanding natural beauty and must for that purpose co-operate with local authorities and public bodies whose functions include the promotion of economic or social development within the area of outstanding natural beauty⁷.

The powers of a conservation board include power to do anything which, in the opinion of the board, is calculated to facilitate, or is conducive or incidental to, the accomplishment of the purposes under head (1) or the carrying out of any functions⁸ conferred on it⁹.

A conservation board may, for the purposes of any of its functions¹⁰, acquire by agreement¹¹ any land, whether situated inside or outside its area of outstanding natural beauty¹². A conservation board may dispose, in any manner it wishes, of land which is held by it but no longer required by it for the purposes of its functions¹³.

1 As to the formation of conservation boards see PARA 660.

2 Countryside and Rights of Way Act 2000 s 87(1)(a). As to areas of outstanding natural beauty see PARA 658 et seq.

3 Countryside and Rights of Way Act 2000 s 87(1)(b).

4 Countryside and Rights of Way Act 2000 s 87(1).

5 Ie under the Countryside Act 1968 ss 37, 38: see PARA 523-524.

6 Countryside and Rights of Way Act 2000 s 87(3). As to the meaning of 'local authority' see PARA 658 note 6.

7 Countryside and Rights of Way Act 2000 s 87(2) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 166, Sch 12).

8 Ie conferred under any other provision of the Countryside and Rights of Way Act 2000 Pt IV (ss 82-93) or by virtue of any enactment not contained in Pt IV.

9 Countryside and Rights of Way Act 2000 s 87(4). However, this does not include power to do anything in contravention of any restriction imposed by virtue of Pt IV in relation to any express power of the board, or power to raise money, whether by borrowing or otherwise, in a manner which is not authorised apart from under s 87(4), but the things that may be done in exercise of those powers are not to be treated as excluding

anything by reason only that it involves the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights: s 87(5).

10 le under the Countryside and Rights of Way Act 2000 or any other enactment: Sch 14 para 2(1).

11 For these purposes, 'acquire by agreement' is a reference to acquisition for money or money's worth as purchaser or lessee: Countryside and Rights of Way Act 2000 Sch 14 para 2(2).

12 Countryside and Rights of Way Act 2000 Sch 14 para 2(1).

13 Countryside and Rights of Way Act 2000 Sch 14 para 3. However, except with the consent of the Secretary of State (as respects England) or the Welsh Ministers (as respects Wales), a conservation board may not: (1) dispose under Sch 14 para 3 of land which consists of or forms part of a common, or formerly consisted of or formed part of a common, and is managed by a local authority in accordance with a local Act (Sch 14 para 4(1)(a)); or (2) dispose under Sch 14 para 3 of land, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained (Sch 14 para 4(1)(b)). For these purposes, a disposal of land is a disposal by way of a short tenancy if it consists of the grant of a term not exceeding seven years, or of the assignment of a term which at the date of the assignment has not more than seven years to run: Sch 14 para 4(2). A conservation board may not dispose under Sch 14 para 3 of any land consisting of or forming part of an open space unless before disposing of the land it causes notice of its intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and it considers any objections to the proposed disposal which may be made to it: Sch 14 para 5. The Local Government Act 1972 s 128 (consents to land transactions by local authorities: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 529) applies in relation to a conservation board as if a conservation board were a principal council and as if the Countryside and Rights of Way Act 2000 Sch 14 paras 3-5 were contained in the Local Government 1972 Pt VII (ss 111-146A): Countryside and Rights of Way Act 2000 Sch 14 para 6.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(2) AREAS OF OUTSTANDING NATURAL BEAUTY/662. Conservation board management plans.

662. Conservation board management plans.

Every conservation board¹ must, within two years after the date on which it is established, prepare and publish a plan which formulates its policy for the management of its area of outstanding natural beauty² and for the carrying out of its functions in relation to it³, to be known as an 'area of outstanding natural beauty management plan'⁴. The relevant local authority⁵ in respect of an area of outstanding natural beauty must, before the end of the period of three years⁶ prepare and publish a plan which formulates its policy for the management of the area of outstanding natural beauty and for the carrying out of its functions in relation to it⁷.

Instead of preparing such a plan, a conservation board or relevant local authority may review any plan for the management of the area of outstanding natural beauty which has been prepared before the commencement of these provisions⁸ by a local authority, or by a joint committee established by two or more local authorities, and adopt the plan as reviewed as its area of outstanding natural beauty management plan, and publish it within the time required⁹.

A conservation board may, within six months of the date on which it is established, adopt an area of outstanding natural beauty management plan prepared for its area of outstanding natural beauty by the relevant local authority as its area of outstanding natural beauty management plan, and publish it¹⁰.

A conservation board must review its area of outstanding natural beauty management plan before the end of the period of five years beginning with the date on which it was published and, after the first review, at intervals of not more than five years¹¹.

Where a conservation board or relevant local authority reviews any plan it must determine on that review whether it would be expedient to amend the plan and what (if any) amendments would be appropriate, make any such amendments, and publish a report on the review specifying any amendments made¹².

A conservation board or relevant local authority which is proposing to publish, adopt or review any plan:

- 197 (1) must give notice of the proposal, if the area of outstanding natural beauty is in England, to Natural England or, if the area of outstanding natural beauty is in Wales, to the Countryside Council of Wales¹³; and a conservation board must also give notice to every local authority whose area is wholly or partly comprised in the area of outstanding natural beauty¹⁴;
- 198 (2) must send a copy of the plan, together, where appropriate, with any proposed amendments of the plan, to every body to which notice of the proposal is required to be given by head (1)¹⁵; and
- 199 (3) must take into consideration any observations made by any such body¹⁶.

A conservation board or relevant local authority must send to the Secretary of State or the Welsh Ministers a copy of every plan, notice or report which it is required to publish¹⁷.

1 As to conservation boards see PARA 660 et seq.

2 As to the meaning of 'area of outstanding natural beauty' see PARA 658.

3 Countryside and Rights of Way Act 2000 s 89(1).

4 Countryside and Rights of Way Act 2000 s 89(4).

5 'Relevant local authority' means, in the case of an area of outstanding natural beauty which is wholly comprised in one principal area, the local authority for that area; and, in any other case, the local authorities for all the principal areas wholly or partly comprised in the area of outstanding natural beauty, acting jointly: Countryside and Rights of Way Act 2000 s 89 (11). As to the meaning of 'local authority' see PARA 658 note 6.

6 The three years beginning with whichever is the later of the commencement of the Countryside and Rights of Way Act 2000 s 89 or the date on which the area is designated as an area of outstanding natural beauty: s 89(2). Section 89 was brought into force in relation to England on 1 April 2001 (see the Countryside and Rights of Way Act 2000 (Commencement No 1) Order 2001, SI 2001/114), and in relation to Wales on 1 March 2001 (see the Countryside and Rights of Way Act 2000 (Commencement No 2) (Wales) Order 2001, SI 2001/1410).

7 Countryside and Rights of Way Act 2000 s 89(2). This does not apply where, before the end of the period mentioned, a conservation board has been established for the area of outstanding natural beauty: s 89(3). Where an area of outstanding natural beauty management plan has been prepared under s 89(2), the relevant local authority must review the plan before the end of the period of five years beginning with the date on which it was published and, after the first review, at intervals of not more than five years, but this does not apply where a conservation board has been established for the area of outstanding natural beauty: s 89(9).

8 The time beginning with the date on which the area is designated as an area of outstanding natural beauty: s 89(2). As to the commencement of the Countryside and Rights of Way Act 2000 s 89, as to which see note 6.

9 Countryside and Rights of Way Act 2000 s 89(5). The time required is the time under s 89(1), (2) (see the text and notes 1-7).

10 Countryside and Rights of Way Act 2000 s 89(6).

11 Countryside and Rights of Way Act 2000 s 89(7). Where a conservation board has adopted a plan under s 89(6) (see the text and note 10), the first review must take place before the end of the period of three years beginning with the date on which the plan was published: s 89(8).

12 Countryside and Rights of Way Act 2000 s 89(10).

13 As to Natural England and the Countryside Council for Wales see PARAS 523-524.

14 Countryside and Rights of Way Act 2000 s 90(1)(a) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 paras 164(d), 167, Sch 12).

15 Countryside and Rights of Way Act 2000 s 90(1)(b).

16 Countryside and Rights of Way Act 2000 s 90(1)(c).

17 Countryside and Rights of Way Act 2000 s 90(2). As to the Secretary of State and the Welsh Ministers see PARA 519.

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(3) NATURE RESERVES AND WETLANDS

(i) Establishment of Nature Reserves

663. Meaning of 'nature reserve'.

'Nature reserve' means land¹ managed solely for a conservation purpose², or land managed not only for a conservation purpose but also for a recreational purpose³, if the management of the land for the recreational purpose does not compromise its management for the conservation purpose⁴.

1 As to the meaning of 'land' see PARA 636 note 1.

2 National Parks and Access to the Countryside Act 1949 s 15(1)(a) (s 15 substituted by the Natural Environment and Rural Communities Act 2006 Sch 11 para 12). Land is managed for a conservation purpose if it is managed for the purpose of providing, under suitable conditions and control, special opportunities for the study of, and research into, matters relating to the fauna and flora of Great Britain and the physical conditions in which they live, and for the study of geological and physiographical features of special interest in the area; or preserving flora, fauna or geological or physiographical features of special interest in the area, or for both those purposes: National Parks and Access to the Countryside Act 1949 s 15(2) (as so substituted). As to marine conservation zones and marine nature reserves see PARA 666.

3 Land is managed for a recreational purpose if it is managed for the purpose of providing opportunities for the enjoyment of nature or for open-air recreation: National Parks and Access to the Countryside Act 1949 s 15(3) (as substituted: see note 2).

4 National Parks and Access to the Countryside Act 1949 s 15(1)(b) (as substituted: see note 2).

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664. Establishment by Natural England or the Countryside Council for Wales.

In relation to England, Natural England¹ may establish a nature reserve through the making of a management agreement or a nature reserve agreement².

In relation to Wales, the Countryside Council for Wales³ may enter into an agreement⁴ with the owner, lessee or occupier of any land⁵ for the purpose of securing that the land should be managed as a nature reserve⁶ where it appears to the Council that it is expedient in the national interest that the land should be so managed⁷.

This power is in addition to the appropriate conservation body's power to acquire land by compulsory acquisition⁸.

Where the appropriate conservation body is satisfied that any land⁹ which:

- 200 (1) is being managed as a nature reserve¹⁰ under an agreement entered into with it¹¹;
- 201 (2) is held by the appropriate conservation body and is being managed by it as a nature reserve¹²; or
- 202 (3) is held by an approved body¹³ and is being managed by that body as a nature reserve¹⁴,

is of national importance, it may declare that land to be a national nature reserve¹⁵.

1 As to Natural England see PARA 523.

2 As to management agreements and nature reserve agreements see PARA 762.

3 As to the Countryside Council for Wales see PARA 524.

4 As to the contents and effect of such agreements see PARA 671.

5 Tenants for life and certain other limited owners may enter into such agreements: see the National Parks and Access to the Countryside Act 1949 s 16(4) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 14(1), (4)); applying the Forestry Act 1967 Sch 2 para 1. As to such agreements see **FORESTRY** vol 52 (2009) PARA 119.

6 As to the meaning of 'nature reserve' see PARA 663.

7 National Parks and Access to the Countryside Act 1949 s 16(1) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 14(1), (2)(a)). The appropriate authority (as to the meaning of which see PARA 639 note 2) may enter into such an agreement in respect of Crown land (as to the meaning of which see PARA 639 note 1): see the National Parks and Access to the Countryside Act 1949 s 101(4) (amended by the London Government Act 1963 Sch 18 Pt II).

A declaration by the appropriate conservation body that any land is the subject of a nature reserve agreement or an agreement under the National Parks and Access to the Countryside Act 1949 s 16 or has been acquired and is being held by the appropriate conservation body is prima facie evidence of that fact (s 19(1) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 paras 15(c), 18)), and a declaration by the appropriate conservation body that any land which is subject to such an agreement or is held by the appropriate conservation body is being managed as a nature reserve is conclusive of the matters declared (National Parks and Access to the Countryside Act 1949 s 19(2) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 15(c))). 'Appropriate conservation body' means, in relation to England,

Natural England and, in relation to Wales, the Countryside Council for Wales: National Parks and Access to the Countryside Act 1949 s 15A(1) (s 15A added by the Environmental Protection Act 1990 Sch 9 para 1(2); and s 15A(1) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 13(1)-(3)); Wildlife and Countryside Act 1981 s 34A (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 84). As to Natural England see PARA 523. Where such a declaration has been made and the agreement ceases to be in force or land held by the appropriate conservation body ceases to be used as a nature reserve, the appropriate conservation body must make a declaration to that effect, and such a declaration is conclusive of the matters declared: National Parks and Access to the Countryside Act 1949 s 19(3) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 15(c)). Notice of these declarations is published in such manner as appears to the appropriate conservation body best suited for informing the persons concerned (National Parks and Access to the Countryside Act 1949 s 19(4) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 15(c))), and a document certified by the appropriate conservation body to be a true copy of any such declaration is receivable in evidence and prima facie is deemed to be such a copy (National Parks and Access to the Countryside Act 1949 s 19(5) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 15(c))).

8 See the National Parks and Access to the Countryside Act 1949 s 17: and PARA 668.

9 The land which may be declared to be a national nature reserve includes any land lying above mean low water mark, and any land covered by estuarial waters: Wildlife and Countryside Act 1981 s 35(1A) (s 35(1A)-(1D) added by the Marine and Coastal Access Act 2009 Sch 13 para 10(1)). As to the meaning of 'estuarial waters' see PARA 674 note 3. As to the meaning of 'land' generally see PARA 636 note 1.

Where the area of land to which a declaration under the Wildlife and Countryside Act 1981 s 35(1) relates includes land falling within s 35(1A) ('area A'), it may also include land not falling within s 35(1A) ('area B') if area B adjoins area A and any of the following conditions is satisfied: (1) the flora, fauna or features leading to the management of area A as a nature reserve is or are also present in area B; (2) the management of area A as a nature reserve is by reason of any flora or fauna which are dependent (wholly or in part) on anything which takes place in, or is present in, area B; (3) without the inclusion of area B, the identification of the boundary of the land declared to be a national nature reserve (either in the declaration or on the ground for the purposes of exercising functions in relation to it) would be impossible or impracticable: see s 35(1B), (1C) (as so added). The ministerial authority may issue guidance to the appropriate conservation body about the exercise of the power conferred by s 35(1B) to make a declaration in relation to land lying below mean low water mark (s 35(1D) (as so added)), and also has power to call in subtidal declarations (see s 35A (added by the Marine and Coastal Access Act 2009 Sch 13 para 11)). For the purposes of the Wildlife and Countryside Act 1981 s 35(1D) and s 35A 'the ministerial authority' means, in relation to England, the Secretary of State and, in relation to Wales, the Welsh Ministers: see s 35(1D), 35A(12) (both as so added).

No declaration under s 35(1) made before the coming into force of the Marine and Coastal Access Act 2009 Sch 13 para 10 may be questioned in legal proceedings on the ground that the area of land to which the declaration relates includes land lying below mean low water mark: Sch 13 para 10(2).

At the date at which this volume states the law, no day had been appointed for the amendments made by the Marine and Coastal Access 2009 to come into force in relation to Wales.

10 For these purposes, 'nature reserve' has the same meaning as in the National Parks and Access to the Countryside Act 1949 Pt II (ss 4A-14) (see PARA 663): Wildlife and Countryside Act 1981 s 35(5).

11 Wildlife and Countryside Act 1981 s 35(1)(a) (s 35(1) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 85).

12 Wildlife and Countryside Act 1981 s 35(1)(b) (as amended: see note 11).

13 'Approved body' means a body approved by the appropriate conservation body for this purpose: Wildlife and Countryside Act 1981 s 35(5) (definition amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 85).

14 Wildlife and Countryside Act 1981 s 35(1)(c) (as amended: see note 11).

15 Wildlife and Countryside Act 1981 s 35(1) (as amended: see note 11). A declaration by the appropriate conservation body that any land is a national nature reserve is conclusive of the matters declared, and the provisions of the National Parks and Access to the Countryside Act 1949 s 19(4), (5) apply in relation to any such declaration: Wildlife and Countryside Act 1981 s 35(2) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 85).

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665. Establishment by local authorities.

The council of a county, county borough, or district has power to establish, or secure the provision of, nature reserves¹ on any land² in its area which is not already held by or managed in accordance with an agreement entered into with the appropriate conservation body³ as to which it appears to the council expedient that it should be managed as a nature reserve⁴.

A local authority⁵ establishing a nature reserve has the same powers of entering into agreements, acquiring land and all the other powers that are conferred upon the appropriate conservation body in respect of a nature reserve, but in such a case the requirement that it must appear expedient in the national interest that the land should be managed as a nature reserve includes the interests of the locality⁶. In exercising its functions in this connection the local authority must act in consultation with the appropriate conservation body⁷.

A local authority which is managing any land as a nature reserve may enter into an agreement with any drainage authority⁸ providing for the drainage authority to do any work on the land which the local authority has power to do, on such terms as may be specified in the agreement⁹. The county council or district council may defray, or contribute towards, any expenditure incurred by the Environment Agency for the benefit of a nature reserve managed by or under an agreement with the council, or in consequence of anything done in the management of such a reserve¹⁰.

Apart from these powers, in the exercise of their functions relating to land under any enactment, every public body¹¹, minister and government department must have regard to the desirability of conserving the natural beauty and amenity of the countryside¹².

Any power conferred by the National Parks and Access to the Countryside Act 1949 on a local authority to acquire land compulsorily is exercisable in any particular case on its being authorised to do so by the Secretary of State or the Welsh Ministers¹³.

1 As to the meaning of 'nature reserve' see PARA 663.

2 As to the meaning of 'land' see PARA 636 note 1.

3 I.e. Natural England in relation to England, and the Countryside Council for Wales in relation to Wales: see PARA 664 note 7.

4 National Parks and Access to the Countryside Act 1949 s 21(1) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 15(e)).

5 As to the meaning of 'local authority' see PARA 636 note 10. The powers conferred on a county council by the National Parks and Access to the Countryside Act 1949 ss 21, 99(6) are also exercisable as respects any district by the district council and references to a local authority must be construed accordingly: see the Local Government Act 1972 Sch 17 para 34. The bodies on whom powers are conferred by the National Parks and Access to the Countryside Act 1949 s 21 include national park authorities: Environment Act 1995 Sch 9 para 3. As to national park authorities see PARA 526. The National Parks and Access to the Countryside Act 1949 ss 21, 22 have effect as if the Broads Authority were a county council: s 111A(1) (s 111A added by the Norfolk and Suffolk Broads Act 1988 Sch 3 para 2). As to the Broads Authority see PARA 531; and **WATER AND WATERWAYS** vol 101 (2009) PARA 734.

6 National Parks and Access to the Countryside Act 1949 s 21(4) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 19).

7 National Parks and Access to the Countryside Act 1949 s 21(6) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 15(e)).

8 'Drainage authority' means the Environment Agency or an internal drainage board: National Parks and Access to the Countryside Act 1949 s 114(1) (definition substituted by the Water Consolidation (Consequential Provisions) Act 1991 Sch 1 para 7; and amended by SI 1996/593). As to the Environment Agency see PARA 528; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq. As to internal drainage boards see **WATER AND WATERWAYS** vol 101 (2009) PARA 569 et seq.

9 National Parks and Access to the Countryside Act 1949 s 21(5). Where the appropriate conservation body, the local authority (including a district council) or any other person enters into an agreement with a drainage authority for the doing of any work on a nature reserve, no limitation imposed by the law on the capacity of a drainage authority by virtue of its constitution operates to prevent the drainage authority from carrying out the agreement: s 22 (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 15(f)); Local Government Act 1972 Sch 17 para 34.

10 National Parks and Access to the Countryside Act 1949 s 99(6) (amended by the Local Government Act 1972 Sch 30; the Water Act 1989 Sch 25 para 13(2); and SI 1996/593).

11 'Public body' includes any local authority or statutory undertaker, and any trustees, commissioners, board or other persons who, as a public body and not for their own profit, act under any enactment for the improvement of any place or the production or supply of any commodity or service: Countryside Act 1968 s 49(2).

12 Countryside Act 1968 s 11.

13 See the National Parks and Access to the Countryside Act 1949 s 103(1) (substituted by the Nature Conservancy Council Act 1973 Sch 1 para 2(1); and amended by the Environmental Protection Act 1990 Sch 9 para 1(4); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 15(g)). As to the Secretary of State and the Welsh Ministers see PARA 519. For these purposes, 'land' includes an interest in land: National Parks and Access to the Countryside Act 1949 s 103(6) (amended by the Acquisition of Land Act 1981 Sch 6 Pt I). The Acquisition of Land Act 1981 applies to the acquisition of land under the National Parks and Access to the Countryside Act 1949, and in relation to the acquisition under that Act of any interest in land the Compulsory Purchase Act 1965 applies with any necessary modifications: National Parks and Access to the Countryside Act 1949 s 103(1A) (added by the Acquisition of Land Act 1981 Sch 4 para 8). The Land Compensation Act 1961 applies to compulsory acquisition of land: see s 1; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 516.

With the consent of the Secretary of State or the Welsh Ministers, a local authority may acquire by agreement, whether by way of purchase, lease or exchange, any land, within or without its area, which it requires for the purpose of any of its functions under the National Parks and Access to the Countryside Act 1949 or the Countryside Act 1968 or any other land which it may be authorised to acquire compulsorily by those Acts; and this power takes effect in place of the general power given to local authorities to acquire land by agreement conferred by the Local Government Act 1972 s 120 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 509): National Parks and Access to the Countryside Act 1949 s 103(5); Countryside Act 1968 s 46(1). The National Parks and Access to the Countryside Act 1949 refers to the Minister of Town and Country Planning (see ss 103(5), 114(1)), whose functions have been transferred to the Secretary of State or the Welsh Ministers: see PARA 519.

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666. Marine conservation zones and marine nature reserves.

In relation to England¹, marine conservation zones may be designated for the purpose of conserving: (1) marine flora or fauna; (2) marine habitats or types of marine habitat; (3) features of geological or geomorphological interest². Areas that were previously designated as marine nature reserves³ are to be treated as if they were marine conservation zones⁴.

In relation to Wales⁵, marine nature reserves may be designated, and such reserves are to be managed by the appropriate conservation body⁶ for either or both of the following purposes: (a) conserving marine flora or fauna or geological or physiographical features of special interest; or (b) providing, under suitable conditions and control, special opportunities for the study of, and research into, matters relating to marine flora and fauna and the physical conditions in which they live, or for the study of geological and physiographical features of special interest⁷.

1 The Marine and Coastal Access Act 2009 Pt 5 Ch 1 (ss 116-147) makes provision for marine conservation zones: see further **WATER AND WATERWAYS**. These provisions came into force on 12 November 2009 in so far as they grant power to make regulations or an order (see s 324(1)(c)); and they came fully into force in relation to England on 12 January 2010 (see s 324(2)(b)), but at the date at which this volume states the law no day had been appointed for their full commencement in relation to Wales (see s 324(3)).

2 See the Marine and Coastal Access Act 2009 ss 116, 117; and **WATER AND WATERWAYS**.

3 Ie under the Wildlife and Countryside Act 1981 s 36: see note 5.

4 See the Marine and Coastal Access Act 2009 Sch 12; and **WATER AND WATERWAYS**.

5 The provisions of the Wildlife and Countryside Act 1981 s 36 and Sch 12, which make provision for marine nature reserves, were repealed in relation to England as from 12 January 2010, and are repealed as from a day to be appointed in relation to Wales but at the date at which this volume states the law no such day had been appointed: see the Marine and Coastal Access Act 2009 Sch 11 para 2, Sch 22 Pt 3. As to the commencement of Sch 11 and Sch 22 see s 324.

6 Ie the Countryside Council for Wales: see PARA 664 note 7. As to the Countryside Council for Wales see PARA 524.

7 Wildlife and Countryside Act 1981 s 36 (amended by the Local Government Act 1985 Sch 17; the Territorial Sea Act 1987 Sch 1 para 6; the Pilotage Act 1987 Sch 3; the Water Act 1989 Sch 25 para 66; the Local Government (Wales) Act 1994 Sch 16 para 65(4); the Countryside and Rights of Way Act 2000 Sch 16 Pt III; the Natural Environment and Rural Communities Act 2006 Sch 11 para 85; and SI 1996/593). See also the Wildlife and Countryside Act 1981 Sch 12 (amended by the Local Government (Wales) Act 1994 Sch 16 para 65(10)). As to byelaws for the protection of marine nature reserves see PARA 673.

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667. Wetlands of international importance.

Where a wetland¹ in Great Britain has been designated under the Ramsar Convention² for inclusion in the list of wetlands of international importance, the Secretary of State or the Welsh Ministers³ must:

- 203 (1) notify Natural England⁴ if all or part of the wetland is in England⁵;
- 204 (2) notify the Countryside Council for Wales⁶ if it is in Wales⁷; or
- 205 (3) notify both of them if it is partly in England and partly in Wales⁸.

On receipt of a notification, each body notified must, in turn, notify:

- 206 (a) the local planning authority⁹ in whose area the wetland is situated¹⁰;
- 207 (b) every owner and occupier of any of that wetland¹¹;
- 208 (c) the Environment Agency¹²; and
- 209 (d) every relevant undertaker¹³ and every internal drainage board whose works, operations or activities may affect the wetland¹⁴.

Natural England and the Countryside Council for Wales may agree that in a case where they are both notified, any notice under heads (a) to (d) is to be sent by one or the other of them (and not both), so as to avoid duplicate notices¹⁵.

1 'Wetland' means an area of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres: Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, 2 February 1971; TS 34 (1976); Cm 6465), as amended by the Protocol (Paris, 3 December 1982); and the Regina Amendments (Regina, 28 May 1987; TS 13 (1996); Cm 3053) (the 'Ramsar Convention') art 1 para 1.

2 Ie under the Ramsar Convention: Wildlife and Countryside Act 1981 s 37A(4) (s 37A added by the Countryside and Rights of Way Act 2000 s 77). However, where the Ramsar Convention is further amended after the passing of the Countryside and Rights of Way Act 2000, the reference to the Ramsar Convention is to be taken after the entry into force of the further amendments as referring to that Convention as further amended and the reference to art 2 para 1 is, if necessary, to be taken as referring to the appropriate successor provision: Wildlife and Countryside Act 1981 s 37A(5) (as so added).

3 As to the Secretary of State and the Welsh Ministers see PARA 519.

4 As to Natural England see PARA 523.

5 Wildlife and Countryside Act 1981 s 37A(1)(a) (as added (see note 2); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 86).

6 As to the Countryside Council for Wales see PARA 524.

7 Wildlife and Countryside Act 1981 s 37A(1)(b) (as added: see note 2).

8 Wildlife and Countryside Act 1981 s 37A(1)(c) (as added: see note 2).

9 As to the meaning of 'local planning authority' see PARA 639 note 12.

10 Wildlife and Countryside Act 1981 s 37A(2)(a) (as added: see note 2).

11 Wildlife and Countryside Act 1981 s 37A(2)(b) (as added: see note 2).

12 Wildlife and Countryside Act 1981 s 37A(2)(c) (as added: see note 2). As to the Environment Agency see PARA 528; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.

13 For these purposes, 'relevant undertaker' has the same meaning as under the Water Industry Act 1991 s 4(1) (see **WATER AND WATERWAYS** vol 100 (2009) PARA 137); Wildlife and Countryside Act 1981 s 37A(2)(d) (as added: see note 2).

14 Wildlife and Countryside Act 1981 s 37A(2)(d) (as added: see note 2).

15 Wildlife and Countryside Act 1981 s 37A(3) (as added (see note 2); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 86).

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(ii) Functions of Natural England and the Countryside Council for Wales

668. Powers of compulsory acquisition.

If the appropriate conservation body¹ is satisfied that it is expedient in the national interest that any land² should be managed as a nature reserve³ and that the appropriate conservation body is unable to conclude an agreement on terms appearing to it to be reasonable⁴ with the owner⁵, lessee or occupier of the land containing such terms as in its opinion are required for securing that it would be satisfactorily managed for that purpose, the appropriate conservation body may acquire the land compulsorily⁶.

The appropriate conservation body may also acquire an interest in land compulsorily when it has entered into an agreement with the owner, lessee or occupier of an interest in the land for its management as a nature reserve and there has been a breach of the agreement which prevents or impairs its satisfactory management as such⁷. If the breach is capable of remedy, the appropriate conservation body cannot acquire the interest in the land until a reasonable time after giving notice requiring it to be remedied⁸. Any dispute as to whether there has been such a breach must be determined by an arbitrator⁹.

Any power conferred by the National Parks and Access to the Countryside Act 1949 on the appropriate conservation authority to acquire land compulsorily is exercisable in any particular case on its being authorised to do so by the Secretary of State or the Welsh Ministers¹⁰.

1 Ie Natural England in relation to England, and the Countryside Council for Wales in relation to Wales: see PARA 664 note 7.

2 As to the meaning of 'land' see PARA 636 note 1.

3 As to the meaning of 'nature reserve' see PARA 663.

4 Ie under the National Parks and Access to the Countryside Act 1949 s 16 (see PARA 664): s 17(2) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 paras 15(a), 16(a)).

5 'Owner' in relation to any land means any person being either entitled to the fee simple or being a mortgagee in possession of the land: National Parks and Access to the Countryside Act 1949 s 114(1).

6 National Parks and Access to the Countryside Act 1949 s 17(1) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 15(a)). As to compulsory acquisition of land generally see **COMPULSORY ACQUISITION OF LAND**.

7 National Parks and Access to the Countryside Act 1949 s 18(1) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 paras 15(b), 17(a)). An interest in Crown land, other than one held by or on behalf of the Crown, may be acquired under these powers, but only with the consent of the appropriate authority: National Parks and Access to the Countryside Act 1949 s 101(5). As to the meaning of 'appropriate authority' see PARA 639 note 2. As to the meaning of 'Crown land' see PARA 639 note 1.

8 National Parks and Access to the Countryside Act 1949 s 18(2) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 15(b)).

9 National Parks and Access to the Countryside Act 1949 s 18(3). As to arbitration generally see **ARBITRATION**.

10 See the National Parks and Access to the Countryside Act 1949 s 103(1) (substituted by the Nature Conservancy Council Act 1973 Sch 1 para 2(1); and amended by the Environmental Protection Act 1990 Sch 9 para 1(4); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 15(g)). As to the Secretary of State and the Welsh Ministers see PARA 519. For these purposes, 'land' includes an interest in land: National Parks and Access to the Countryside Act 1949 s 103(6) (amended by the Acquisition of Land Act 1981 Sch 6 Pt I). The Acquisition of Land Act 1981 applies to the acquisition of land under the National Parks and Access to the Countryside Act 1949, and in relation to the acquisition under that Act of any interest in land the Compulsory Purchase Act 1965 applies with any necessary modifications: National Parks and Access to the Countryside Act 1949 s 103(1A) (added by the Acquisition of Land Act 1981 Sch 4 para 8). In s 103(1) the reference to the appropriate conservation body so far as referring to the Countryside Council for Wales for purposes connected with its nature conservation functions (within the meaning of the Environmental Protection Act 1990 s 131 (see PARA 524)) includes a reference to that Council for purposes connected with their countryside functions (whether conferred by the Countryside Act 1968, the National Parks and Access to the Countryside Act 1949 or otherwise): see the Countryside Act 1968 s 46(1), (2) (amended by the Environmental Protection Act 1990 Sch 8 para 2(1), (12), Sch 16 Pt VI; and the Natural Environment and Rural Communities Act 2006 Sch 11 para 55(1), (2)). The Land Compensation Act 1961 applies to compulsory acquisition of land: see s 1; and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 516.

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669. Powers of entry.

In connection with the acquisition of land or any interest in it and the making of related access orders, whether by agreement or compulsorily under the National Parks and Access to the Countryside Act 1949 or the Countryside Act 1968, any person authorised in writing by the Secretary of State or the Welsh Ministers¹ or the authority having power to acquire the land may enter upon the land for the purpose of surveying it². When compensation is payable under those Acts, any relevant officer³ or any person authorised in writing by the body from which the compensation is claimed may enter upon the land for the purpose of surveying it or estimating its value⁴. A person entering under these powers must give at least 14 days' notice in writing to the occupier and, if it is demanded, show his authority before entry⁵; and wilful obstruction of such a person is an offence⁶.

1 The National Parks and Access to the Countryside Act 1949 refers to the Minister for Town and Country Planning (see ss 108, 114(1)), whose functions have been transferred to the Secretary of State or the Welsh Ministers: see **PARA 519**.

2 National Parks and Access to the Countryside Act 1949 s 108(1) (amended by the Highways Act 1959 Sch 25; and the London Government Act 1963 Sch 6 para 70, Sch 18 Pt II); Countryside Act 1968 s 46(1). As to the meaning of 'land' see **PARA 636** note 1. As to the power of entry in relation to the destruction of diseased animals see **ANIMALS** vol 2 (2008) **PARA 1089**.

3 The National Parks and Access to the Countryside Act 1949 s 108 refers to any person being an officer of the Valuation Office, which is defined as the Valuation Office of the Inland Revenue Department (see the Town and Country Planning Act 1990 s 336(1) (applied by the National Parks and Access to the Countryside Act 1949 to the Countryside Act 1949 s 114; and the Planning (Consequential Provisions) Act 1990 s 2(4))), however the Inland Revenue has been replaced by Her Majesty's Revenue and Customs and this reference should be taken to be a reference to the Valuation Office of Her Majesty's Revenue and Customs (see the Commissioners for Revenue and Customs Act 2005 s 50(3)). See further **BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS** vol 4(3) (Reissue) **PARA 287**.

4 National Parks and Access to the Countryside Act 1949 s 108(2); Countryside Act 1968 s 46(1).

5 National Parks and Access to the Countryside Act 1968 s 108(3) (amended by the Countryside Act 1968 s 46(3)); Countryside Act 1968 s 46(1).

6 National Parks and Access to the Countryside Act 1949 s 108(4) (amended by the Criminal Justice Act 1982 s 46); Countryside Act 1968 s 46(1). The offence is punishable on summary conviction by a fine not exceeding level 1 on the standard scale: National Parks and Access to the Countryside Act 1949 s 108(4); Countryside Act 1968 s 46(1). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) **PARA 142**.

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670. Other functions.

Where scientific or educational work is being carried on, the appropriate conservation body¹ may license certain acts which would otherwise be prohibited².

The appropriate body must advise the Secretary of State or the Welsh Ministers³ as to which wild creatures should be protected under the provisions of the Wildlife and Countryside Act 1981⁴.

1 Ie Natural England in relation to England, and the Countryside Council for Wales in relation to Wales: see PARA 664 note 7.

2 See the Wildlife and Countryside Act 1981 s 16; PARA 713; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1033; **ANIMALS** vol 2 (2008) PARAS 1006, 1019.

3 As to the Secretary of State and the Welsh Ministers see PARA 519.

4 See the Wildlife and Countryside Act 1981 s 24; PARA 714; and **ANIMALS** vol 2 (2008) PARA 1014.

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(iii) Protection and Management of Nature Reserves

671. Contents and effect of agreements as to nature reserves.

A management agreement¹ with Natural England (in relation to England)² may, in particular, impose on the person who has an interest in land³ obligations in respect of the use of the land⁴ or restrictions on the exercise of rights over the land⁵, provide for the carrying out of such work as may be expedient for the purposes of the agreement by any person or persons⁶, provide for any matter for which a management scheme relating to a site of special scientific interest provides (or could provide)⁷, provide for the making of payments by either party to the other party or to any other person⁸, and contain incidental and consequential provision⁹. For the purposes of any enactment or rule of law as to the circumstances in which the dedication of a highway or the grant of an easement may be presumed, or may be established by prescription, the use by the public or by any person of a way across land at any time while it is the subject of a management agreement is to be disregarded¹⁰.

An agreement with the Countryside Council for Wales (in relation to Wales)¹¹ as to the management of land as a nature reserve¹² may impose restrictions upon the rights over the land of persons who can be bound by the agreement¹³. Such an agreement may provide for the land's management and for the carrying out on it of any works and the doing of any other things which are expedient for the purpose of securing that it is managed as a nature reserve¹⁴. It may also provide for the cost involved being defrayed by the owner of the land or other persons, or by the Council, or partly in one way and partly in another¹⁵; and, in particular, payments by the Council, including payment of compensation for the effect of restrictions, may be agreed upon¹⁶.

1 As to the establishment of a nature reserve by means of a management agreement see PARA 664. A management agreement is, unless the agreement otherwise provides, binding on persons deriving title under or from the person with whom Natural England makes the agreement, and enforceable by Natural England against those persons: Natural Environment and Rural Communities Act 2006 s 7(3).

2 As to Natural England see PARA 523.

3 For these purposes, 'interest in land' has the same meaning as in the National Parks and Access to the Countryside Act 1949 (see PARA 639 note 4): Natural Environment and Rural Communities Act 2006 s 7(6).

4 Natural Environment and Rural Communities Act 2006 s 7(2)(a).

5 Natural Environment and Rural Communities Act 2006 s 7(2)(b).

6 Natural Environment and Rural Communities Act 2006 s 7(2)(c).

7 Natural Environment and Rural Communities Act 2006 s 7(2)(d). As to sites of special scientific interest see PARA 674 et seq.

8 Natural Environment and Rural Communities Act 2006 s 7(2)(e).

9 Natural Environment and Rural Communities Act 2006 s 7(2)(f).

10 Natural Environment and Rural Communities Act 2006 s 7(5).

11 As to the Countryside Council for Wales see PARA 524.

12 The agreements under the National Parks and Access to the Countryside Act 1949 s 16(1) (see PARA 664). As to the meaning of 'nature reserve' see PARA 663. As to the meaning of 'land' for these purposes see PARA 636 note 1.

13 National Parks and Access to the Countryside Act 1949 s 16(2). Where an agreement contains restrictions on the exercise of rights over the land by the persons bound by it and does not expressly state that the successors in title of the persons so bound should not be affected by it, the Council has special rights of enforcement of these restrictions, and the statutory power to modify or discharge restrictive covenants does not apply: National Parks and Access to the Countryside Act 1949 s 16(4) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 14(1), (4)); applying, where the Law of Property Act 1925 s 79 (which provides that unless a contrary intention is expressed the burden of a covenant runs with the land: see **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 256; and **EQUITY** vol 16(2) (Reissue) PARA 618) applies, the Forestry Act 1967 s 5(2)(a), (b) to any restrictions imposed by an agreement with the Council with the substitution for references to the Forestry Commissioners of references to the Council: see further PARA 529; and **FORESTRY** vol 52 (2009) PARA 34 et seq. As to restrictive covenants see **EQUITY** vol 16(2) (Reissue) PARA 613 et seq. Subject to the requirement for consultation with the Council, the provisions as to the contents and effect of agreements as to nature reserves apply to local authorities as they apply to the Council, and local authorities and drainage authorities have special powers to enter into agreements for these purposes: see the National Parks and Access to the Countryside Act 1949 ss 21(4)-(6), 22; and PARA 665.

14 National Parks and Access to the Countryside Act 1949 s 16(3)(a).

15 National Parks and Access to the Countryside Act 1949 s 16(3)(b) (s 16(3)(b), (c) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 14(1), (3)).

16 National Parks and Access to the Countryside Act 1949 s 16(3)(c) (as amended: see note 15). As to payments under such agreements see also the Wildlife and Countryside Act 1981 s 50.

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672. Byelaws for the protection of nature reserves.

The appropriate conservation body¹ may, as respects land² which is being managed as a nature reserve³ under an agreement entered into with it or a local authority⁴ or land held by it or the authority which is being managed as a nature reserve, make byelaws for the protection of the reserve⁵. In particular these byelaws may:

- 210 (1) prohibit or restrict the entry or movement of persons, vehicles, boats and animals into or in the reserve⁶;
- 211 (2) prohibit or restrict the killing, taking, molesting or disturbing of any living creatures, the taking, destruction or disturbance of their eggs or the taking of, or interference with, the vegetation or soil of the reserve or any object in it⁷;
- 212 (3) prohibit or restrict the shooting of birds within such area surrounding or adjoining a nature reserve, whether land or sea, as appears to the appropriate conservation body necessary for the protection of the reserve⁸;
- 213 (4) prohibit the deposit of rubbish or litter⁹; and
- 214 (5) prohibit or restrict the lighting of fires or the doing of anything likely to cause a fire¹⁰.

The byelaws may make different provisions for different parts of the reserve or neighbouring area¹¹ and may also provide for the grant of permits authorising the doing of any act in the reserve which would otherwise be unlawful¹². However, the byelaws must not interfere with the exercise by any person of a right vested in him as the owner, lessee or occupier of land in a reserve or interfere with the exercise of any public right of way¹³ or of the functions of statutory undertakers¹⁴, an internal drainage board¹⁵, a district fishery board¹⁶, or the Commissioners appointed under the Tweed Fisheries Act 1857 or with the provision of an electronic communications code network¹⁷ or the exercise of any right conferred by or in accordance with the electronic communications code¹⁸ on the operator¹⁹ of any such network²⁰.

Compensation is payable by the appropriate conservation body or the local authority to any person who is prevented or hindered by the byelaws in the exercise of any right vested in him whether by reason of his having an interest in land or by virtue of some licence or agreement²¹.

¹ ie Natural England in relation to England, and the Countryside Council for Wales in relation to Wales: see PARA 664 note 7.

² As to the meaning of 'land' see PARA 636 note 1.

³ As to the meaning of 'nature reserve' see PARA 663.

⁴ See the National Parks and Access to the Countryside Act 1949 s 21(4); and PARA 665. As to the meaning of 'local authority' see PARA 636 note 10.

⁵ National Parks and Access to the Countryside Act 1949 s 20(1) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 15(d)). Such byelaws do not have effect as respects any land in a reserve unless a declaration under the National Parks and Access to the Countryside Act 1949 s 19 (see PARA 664) is in force declaring that the land is being managed as a nature reserve and notice of the declaration has been published: s 20(1) proviso. On the application of the approved body concerned, the appropriate conservation body may, as respects any land which is declared to be a national nature reserve under the Wildlife and Countryside Act 1981 s 35(1)(c) (see PARA 664), make byelaws for the protection of the reserve: s

35(3) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 85). For these purposes, 'approved body' means a body approved by the appropriate conservation body for the purposes of the Wildlife and Countryside Act 1981 s 35: s 35(5) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 85). Certain provisions apply to such byelaws as they apply to byelaws under the National Parks and Access to the Countryside Act 1949: see the Wildlife and Countryside Act 1981 s 35(4). The procedure for making byelaws and for authorising the imposition of fines etc in the Local Government Act 1972 ss 236-238 (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 556-559, 568, 570-571) applies to such byelaws, but may be modified by regulations: see the National Parks and Access to the Countryside Act 1949 s 106(1) (amended by the Environmental Protection Act 1990 Sch 9 para 1(5); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 15(h)). As to such regulations see the Nature Conservancy Council (Byelaws) Regulations 1975, SI 1975/1970. As to byelaws made under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, see PARA 733.

6 National Parks and Access to the Countryside Act 1949 s 20(2)(a). 'Vehicle' does not include a vessel except a vessel adapted for use on land while being so used: s 114(1).

7 National Parks and Access to the Countryside Act 1949 s 20(2)(b).

8 National Parks and Access to the Countryside Act 1949 s 20(2)(c) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 15(d)). These words together with the National Parks and Access to the Countryside Act 1949 s 101 (see PARAS 639, 647, 664) are sufficiently wide to prohibit wild-fowling on the foreshore: *Burnet v Barclay* 1955 JC 34.

9 National Parks and Access to the Countryside Act 1949 s 20(2)(d). As to the control of litter in open spaces see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 723.

10 National Parks and Access to the Countryside Act 1949 s 20(2)(e).

11 National Parks and Access to the Countryside Act 1949 s 20(2)(g).

12 National Parks and Access to the Countryside Act 1949 s 20(2)(f).

13 'Public right of way' does not include a right to navigate in tidal waters: *Evans v Godber* [1974] 3 All ER 341, [1974] 1 WLR 1317, DC.

14 As to the meaning of 'statutory undertakers' see PARA 649 note 3.

15 As to internal drainage boards see **WATER AND WATERWAYS** vol 101 (2009) PARA 569 et seq.

16 Ie within the meaning of the Salmon Fisheries (Scotland) Act 1862: National Parks and Access to the Countryside Act 1949 s 20(2) proviso (amended by the Telecommunications Act 1984 Sch 4 para 28(1); the Water Act 1989 Sch 25 para 13(1); and the Communications Act 2003 Sch 17 para 20(1), (2)).

17 As to electronic communications code networks see **TELECOMMUNICATIONS** vol 97 (2010) PARA 174.

18 As to the electronic communications code see **TELECOMMUNICATIONS** vol 97 (2010) PARA 151 et seq.

19 As to the meaning of 'operator' see **TELECOMMUNICATIONS** vol 97 (2010) PARA 174.

20 National Parks and Access to the Countryside Act 1949 s 20(2) proviso (as amended: see note 16). As to agreements with owners, lessees or occupiers see s 16; and PARAS 664, 671.

21 National Parks and Access to the Countryside Act 1949 s 20(3) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 15(d)); National Parks and Access to the Countryside Act 1949 s 21(4). Any dispute arising on a claim for such compensation must be determined by the Upper Tribunal: s 107(1) (amended by the Highways Act 1959 Sch 25; and the London Government Act 1963 Sch 6 para 70, Sch 18 Pt II; and SI 2009/1307); National Parks and Access to the Countryside Act 1949 s 107(2) (amended by SI 2009/1307). As to the establishment of, and procedure before, the Upper Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 720; and **ADMINISTRATIVE LAW**. Special provision is made as to costs, rules for valuation and interests subject to a mortgage (s 107(3)-(5)) which apply to such compensation: s 107(1). For the powers of entry on land in connection with such claims see s 108(2)-(4); and PARA 669.

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673. Byelaws for the protection of Welsh marine nature reserves.

In relation to Wales¹, the appropriate conservation body² may, with the consent of the Welsh Ministers³, make byelaws for the protection of any area designated⁴ as a marine nature reserve⁵. Such byelaws may provide for prohibiting or restricting the following, either absolutely or subject to any exceptions: (1) the entry into, or movement within, the reserve of persons and vessels⁶; (2) the killing, taking, destruction, molestation or disturbance of animals or plants of any description⁷ in the reserve, or the doing of anything in it which will interfere with the sea bed or damage or disturb any object in the reserve⁸; or (3) the depositing of rubbish in the reserve⁹. They may also provide for the issue, on such terms and subject to such conditions as may be specified in the byelaws, of permits authorising the entry into the reserve or the doing of anything which would otherwise be unlawful under the byelaws¹⁰. Byelaws may be made so as to apply either generally or with respect to particular parts of the reserve or particular times of the year¹¹. However, nothing in such byelaws may prohibit or restrict the exercise of any right of passage by a vessel other than a pleasure boat, or prohibit, except with respect to particular parts of the reserve at particular times of the year, the exercise of any such right by a pleasure boat¹². Nor may anything in such byelaws make unlawful: (a) anything done for the purpose of securing the safety of any vessel, or of preventing damage to any vessel or cargo, or of saving life¹³; (b) the discharge of any substance from a vessel¹⁴; or (c) anything done more than 30 metres below the sea bed¹⁵.

The Welsh Ministers may, after consultation with the appropriate conservation body, direct it to revoke any byelaws previously made under these provisions, or to make any such amendments of any byelaws so made as may be specified in the direction¹⁶.

The appropriate conservation body has power to enforce such byelaws¹⁷.

1 The Wildlife and Countryside Act 1981 s 37 was repealed in relation to England as from 12 January 2010, and is repealed as from a day to be appointed in relation to Wales but at the date at which this volume states the law no such day had been appointed: see the Marine and Coastal Access Act 2009 Sch 11 para 2, Sch 22 Pt 3. As to the commencement of Sch 11 and Sch 22 see s 324.

2 I.e the Countryside Council for Wales: see PARA 664 note 7. As to the Countryside Council for Wales see PARA 524.

3 As to the Welsh Ministers see PARA 519.

4 I.e designated under the Wildlife and Countryside Act 1981 s 36 (see PARA 666): see s 37(1).

5 Wildlife and Countryside Act 1981 s 37(1) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 85). The procedure for making byelaws and for authorising the imposition of fines etc in the Local Government Act 1972 ss 236-238 (see **LOCAL GOVERNMENT** vol 69 (2009) PARAS 556-559, 568, 570-571) applies to such byelaws, but may be modified by regulations: see the Wildlife and Countryside Act 1981 s 37(5), (6) (s 37(5) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 85). As to such regulations see the Wildlife and Countryside (Byelaws for Marine Nature Reserves) Regulations 1986, SI 1986/143. The maximum fine for an offence against any such byelaws must not exceed £1,000: Local Government Act 1972 s 237; Wildlife and Countryside (Byelaws for Marine Nature Reserves) Regulations 1986, SI 1986/143. As to offences under the Wildlife and Countryside Act 1981 committed by a body corporate see PARA 638 note 14.

6 Wildlife and Countryside Act 1981 s 37(2)(a)(i). 'Vessel' includes a hovercraft and any aircraft capable of landing on water; and 'pleasure boat' is to be construed accordingly: s 37(10).

7 References to animals or plants of any description include references to eggs, seeds, spores, larvae or other immature stages of animals or plants of that description: Wildlife and Countryside Act 1981 s 37(11).

8 Wildlife and Countryside Act 1981 s 37(2)(a)(ii).

9 Wildlife and Countryside Act 1981 s 37(2)(a)(iii).

10 Wildlife and Countryside Act 1981 s 37(2)(b).

11 Wildlife and Countryside Act 1981 s 37(2)(c).

12 Wildlife and Countryside Act 1981 s 37(3).

13 Wildlife and Countryside Act 1981 s 37(4)(a).

14 Wildlife and Countryside Act 1981 s 37(4)(b).

15 Wildlife and Countryside Act 1981 s 37(4)(c).

16 Wildlife and Countryside Act 1981 s 37(7) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 85).

17 Wildlife and Countryside Act 1981 s 37(8) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 85). Proceedings for an offence under such byelaws may not, without the consent of the Director of Public Prosecutions, be taken by a person other than the appropriate conservation body: Wildlife and Countryside Act 1981 s 37(9) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 85).

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(4) SITES OF SPECIAL SCIENTIFIC INTEREST ETC

674. Notification of an area as a site of special scientific interest.

Where Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales¹, is of the opinion² that any area of land³ is of special interest by reason of any of its flora, fauna, or geological or physiographical features⁴, it is its duty to notify that fact to:

- 215 (1) the local planning authority⁵, if any, in whose area the land is situated⁶;
- 216 (2) every owner and occupier of any part of that land⁷; and
- 217 (3) the Secretary of State or the Welsh Ministers⁸.

Natural England or the Council must also publish a notification of that fact in at least one local newspaper circulating in the area in which the land is situated⁹. A notification¹⁰ must specify the time within which, not being less than three months from the date of the giving of the notification, and the manner in which, representations or objections with respect to it may be made, and Natural England or the Council must consider any representation or objection duly made¹¹.

A notification under head (2) must specify the flora, fauna or geological or physiographical features by reason of which the land is of special interest, and any operations appearing to Natural England or the Council to be likely to damage that flora or fauna or those features¹². Such a notification will also contain a statement of Natural England's or the Council's views about the management of the land (including any views Natural England or the Council may have about the conservation and enhancement of that flora or fauna or those features)¹³.

Where a notification has been given, Natural England or the Council may, within nine months from the date on which it was served on the Secretary of State or the Welsh Ministers, either give notice to the notified persons¹⁴ withdrawing the notification¹⁵ or give them notice confirming the notification, with or without modifications¹⁶, and the notification will cease to have effect on the giving of notice of its withdrawal to any of those persons¹⁷, or, if not withdrawn or confirmed by notice within the nine-month period, at the end of that period¹⁸.

1 See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

2 The opinion must be reasonably held: *R v Nature Conservancy Council, ex p London Brick Co Ltd* [1996] Env LR 1, [1996] JPL 227. Natural England must have regard to the principles of natural justice (*R v Nature Conservancy Council, ex p Bolton Metropolitan Borough Council* [1995] Env LR 237, [1996] JPL 203; *R (on the application of Aggregate Industries UK Ltd) v English Nature* [2003] Env LR 3), and must strike a balance between competing interests (*Re Christchurch Borough Council* (1992) 7 PAD 557; *William Sinclair Holdings Ltd v English Nature* [2002] Env LR 4); and provided it does so the courts will not interfere (*R (on the application of Boyd) v English Nature* [2003] EWHC 1105 (Admin), [2004] Env LR D4; *R (on the application of Fisher) v English Nature* [2004] EWCA Civ 663, [2004] 4 All ER 861).

3 For these purposes, 'land' includes any land lying above mean low water mark, and any land covered by estuarial waters: Wildlife and Countryside Act 1981 s 28(1A) (s 28(1A)-(1C) added by the Marine and Coastal Access Act 2009 Sch 13 para 2(1), (3)). For the purposes of the Wildlife and Countryside Act 1981 Pt II (ss 27A-52), 'estuarial waters' means any waters within the limits of transitional waters, within the meaning of the Water Framework Directive (ie European Parliament and EC Council Directive 2000/60 (OJ L327, 22.12.2000, p

1) establishing a framework for Community action in the field of water policy): Wildlife and Countryside Act 1981 ss 28(9A), 52(1) (definition added by the Marine and Coastal Access Act 2009 Sch 13 paras 2(1), (7), 4). As to the meaning of 'land' generally see PARA 636 note 1.

Where the area of land to which a notification under the Wildlife and Countryside Act 1981 s 28(1) relates includes land falling within s 28(1A) ('area A'), it may also include land not falling within s 28(1A) ('area B') if area B adjoins area A and any of the following conditions is satisfied: (1) the flora, fauna or features leading to the notification of area A is or are also present in area B; (2) the notification of area A is by reason of any flora or fauna which are dependent (wholly or in part) on anything which takes place in, or is present in, area B; (3) without the inclusion of area B, the identification of the boundary of the land notified (either in the notification or on the ground for the purposes of exercising functions in relation to it) would be impossible or impracticable: see s 28(1B), (1C) (as so added). The ministerial authority may issue guidance to Natural England about the exercise of the power conferred by s 28(1B), s 28B(2B) (see PARA 676) or s 28C(2B) (see PARA 677) to give a notification under s 28(1), s 28B(2) or s 28C(2) (as the case may be) in relation to land lying below mean low water mark; and for the purposes of s 28CA and s 28CB 'the ministerial authority' means, in relation to England, the Secretary of State and, in relation to Wales, the Welsh Ministers: s 28CA (added by the Marine and Coastal Access Act 2009 Sch 13 para 7). The ministerial authority has power to call in subtidal notifications: see the Wildlife and Countryside Act 1981 s 28CB (added by the Marine and Coastal Access Act 2009 Sch 13 para 8).

No notification under the Wildlife and Countryside Act 1981 s 28(1) made before the coming into force of the Marine and Coastal Access Act 2009 Sch 13 para 2 may be questioned in legal proceedings on the ground that the area of land to which the notification relates includes land lying below mean low water mark: Sch 13 para 2(8).

At the date at which this volume states the law, no day had been appointed for the amendments made by the Marine and Coastal Access 2009 to come into force in relation to Wales.

4 It is not necessary for Natural England or the Countryside Council for Wales to exhaust all possible avenues of investigation, recognition of a high number of species is sufficient in itself: *R (on the application of Western Power Distribution Investments Ltd v Countryside Council for Wales)* [2007] EWHC 50 (Admin), [2007] All ER (D) 216 (Jan). As to features see *R (on the application of Boggis) v Natural England* [2008] EWHC 2954 (Admin), [2009] 3 All ER 879; on appeal [2009] EWCA Civ 1061, [2009] All ER (D) 229 (Oct) (coastal erosion of cliffs forming part of site of special scientific interest).

5 As to the meaning of 'local planning authority' see PARA 638 note 15. For the purposes of the Wildlife and Countryside Act 1981 ss 28A-28D, 'local planning authority' in relation to land within the Broads includes the Broads Authority: s 28(10) (s 28 substituted by the Countryside and Rights of Way Act 2000 Sch 9 para 1). 'The Broads' has the same meaning as in the Norfolk and Suffolk Broads Act 1988 (see **WATER AND WATERWAYS** vol 101 (2009) PARA 735): Wildlife and Countryside Act 1981 s 71 (definition added by the Norfolk and Suffolk Broads Act 1988 Sch 3 Pt I para 31(5)). As to the Broads Authority see PARA 531; and **WATER AND WATERWAYS** vol 101 (2009) PARA 734.

6 Wildlife and Countryside Act 1981 s 28(1)(a) (s 28 as substituted (see note 5); s 28(1)-(5), (7) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79; and the Wildlife and Countryside Act 1981 s 28(1)(a) further amended by the Marine and Coastal Access Act 2009 Sch 13 para 2(1), (2)). At the date at which this volume states the law, no day had been appointed for the amendment made by the Marine and Coastal Access 2009 to come into force in relation to Wales.

7 Wildlife and Countryside Act 1981 s 28(1)(b) (as substituted (see note 5); and amended (see note 6)). 'Owner', in relation to any land, means a person, other than a mortgagee not in possession, who, whether in his own right or as trustee or agent for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let: National Parks and Access to the Countryside Act 1949 s 114(1) (applied by the Wildlife and Countryside Act 1981 s 52(4)). As to the meaning of 'occupier' see *Southern Water Authority v Nature Conservancy Council* [1992] 3 All ER 481, [1992] 1 WLR 775, HL.

A notification under head (2) in the text is a local land charge: s 28(9) (as substituted: see note 5). As to local land charges generally see **LAND CHARGES** vol 26 (2004 Reissue) PARA 671 et seq.

8 Wildlife and Countryside Act 1981 s 28(1)(c) (as substituted (see note 5); and amended: see note 6). As to the Secretary of State and the Welsh Ministers see PARA 519. Such an area is commonly called a 'site of special scientific interest' (or SSSI). For example, for the purposes of the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, a site of special scientific interest is defined as land to which the Wildlife and Countryside Act 1981 s 28(1) (areas of special scientific interest) applies: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(2).

The provisions of the Town and Country Planning Act 1990 s 329 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 54) apply to notices and other documents required or authorised to be served or given under the Wildlife and Countryside Act 1981: s 70A(1) (s 70A added by the Wildlife and Countryside (Service of Notices) Act 1985 s 1; and the Wildlife and Countryside Act 1981 s 70A(1), (2) amended by the Planning (Consequential

Provisions) Act 1990 Sch 2 para 54(2)). The Town and Country Planning Act 1990 s 329 does not, however, apply to a notice required to be served under the Wildlife and Countryside Act 1981 Sch 14 para 2 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 598): s 70A(2) (as so added and amended). 'Notice' and 'notification' mean notification in writing: Wildlife and Countryside Act 1981 s 52(1) (definition added by the Countryside and Rights of Way Act 2000 Sch 9 para 5(1), (2)). The Wildlife and Countryside Act 1981 s 70A does not affect the operation of Sch 11 para 2(4) (see PARAS 693, 698) or Sch 15 para 3(4) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 607): s 70A(3) (as so added).

9 Wildlife and Countryside Act 1981 s 28(2) (as substituted (see note 5); and amended (see note 6); and further amended by the Marine and Coastal Access 2009 Sch 13 para 2(1), (4)). At the date at which this volume states the law, no day had been appointed for the amendment made by the Marine and Coastal Access 2009 to come into force in relation to Wales.

10 le a notification under the Wildlife and Countryside Act 1981 s 28(1) (see the text and notes 1-6).

11 Wildlife and Countryside Act 1981 s 28(3) (as substituted (see note 5); and amended (see note 6)).

12 Wildlife and Countryside Act 1981 s 28(4) (as substituted (see note 5); and amended (see note 6)).

13 Wildlife and Countryside Act 1981 s 28(4) (as substituted (see note 5); and amended (see note 6)).

14 le the persons notified under the Wildlife and Countryside Act 1981 s 28(1) (see the text and notes 1-6).

15 Wildlife and Countryside Act 1981 s 28(5)(a) (as substituted (see note 5); and amended (see note 6)). In the case of a notification given in relation to land lying below mean low water mark by virtue of s 28(1B) (see note 3), s 28(5) is subject to s 28CB(4), (6) (see note 3): s 28(5) (amended by the Marine and Coastal Access 2009 Sch 13 para 2(1), (5)). At the date at which this volume states the law, no day had been appointed for the amendment made by the Marine and Coastal Access 2009 to come into force in relation to Wales.

16 Wildlife and Countryside Act 1981 s 28(5)(b) (as substituted (see note 5); and amended (see note 6)). See note 15. The power under s 28(5)(b) to confirm a notification under s 28(1) (see the text and notes 1-8) with modifications must not be exercised so as to add to the operations specified in the notification or extend the area to which it applies: s 28(7) (as so substituted and amended). As from the time when there is served on the owner or occupier of any land which has been notified under s 28(1)(b) (see head (2) in the text) a notice under s 28(5)(b) confirming the notification with modifications, the notification has effect in its modified form in relation to so much, if any, of that land as remains subject to it: s 28(8) (as so substituted and amended). 'Modifications' includes additions, alterations and omissions: s 71.

17 Wildlife and Countryside Act 1981 s 28(6)(a) (as substituted: see note 5).

18 Wildlife and Countryside Act 1981 s 28(6)(b) (as substituted: see note 5). Section 28(6)(b) does not apply in a case where notice has been given to Natural England under s 28CB(3) (see note 3): s 28(6A) (added by the Marine and Coastal Access 2009 Sch 13 para 2(1), (6)). At the date at which this volume states the law, no day had been appointed for the amendment made by the Marine and Coastal Access 2009 to come into force in relation to Wales.

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675. Variation of a notification of an area as a site of special scientific interest.

At any time after notice has been given confirming a notification of an area as a site of special scientific interest¹, Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales², may by notice vary the matters specified or stated in the confirmed notification, whether by adding to them, changing them, or removing matter from them³. The area of land⁴ cannot be so varied⁵.

Natural England or the Council must give notice setting out the variation to:

- 218 (1) the local planning authority⁶, if any, in whose area the land is situated⁷;
- 219 (2) every owner and occupier⁸ of any of the land who in the opinion of Natural England or the Council may be affected by the variation⁹; and
- 220 (3) the Secretary of State or the Welsh Ministers¹⁰.

Where a notice setting out a variation has been given, Natural England or the Council may within the period of nine months beginning with the date the last of the owners and occupiers was served with the notice either give notice to the persons mentioned in heads (1) to (3) above withdrawing the notice¹¹, or give notice to them confirming the notice (with or without modifications)¹². A notice setting out a variation ceases to have effect on the giving of notice of its withdrawal to any of those persons, or, if not withdrawn or confirmed by notice¹³ within the nine-month period, at the end of that period¹⁴.

1 See under the Wildlife and Countryside Act 1981 s 28(5)(b) (see PARA 674). As to the meaning of 'site of special scientific interest' see PARA 674. As to the meanings of 'notice' and 'notification' see PARA 674 note 8.

2 See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

3 Wildlife and Countryside Act 1981 s 28A(1) (s 28A added by the Countryside and Rights of Way Act 2000 Sch 9 para 1; and the Wildlife and Countryside Act 1981 s 28A(1) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79).

4 As to the meaning of 'land' see PARA 636 note 1.

5 Wildlife and Countryside Act 1981 s 28A(2) (as added: see note 3).

6 As to the meaning of 'local planning authority' see PARA 638 note 15.

7 Wildlife and Countryside Act 1981 s 28A(3)(a) (as added (see note 3); and s 28A(3) amended by the Natural Environment and Rural Communities Act 2006 Sch 9 para 79; and further amended by the Marine and Coastal Access Act 2009 Sch 13 para 3). At the date at which this volume states the law, no day had been appointed for the amendment made by the Marine and Coastal Access 2009 to come into force in relation to Wales. See note 10.

8 As to the meanings of 'owner' and 'occupier' see PARA 674 note 7.

9 Wildlife and Countryside Act 1981 s 28A(3)(b) (as added (see note 3); and amended (see note 7)). After service of notice the notification under s 28(1)(b) (see PARA 674) has effect in its varied form: s 28A(3) (as so added and amended). See note 10.

10 Wildlife and Countryside Act 1981 s 28A(3)(c) (as added (see note 3); and amended (see note 7)). Section 28(3) applies (see PARA 674) to such a notice: s 28A(4) (as added: see note 3). A local land charge existing by virtue of s 28(9) (see PARA 674) must be varied in accordance with a notice under s 28A(3), (5)(b) (see the text and note 12): s 28A(8) (as so added). As to local land charges generally see **LAND CHARGES** vol 26 (2004 Reissue) PARA 671 et seq. As to the Secretary of State and the Welsh Ministers see PARA 519. As to the failure to serve notice see PARA 696.

11 Wildlife and Countryside Act 1981 s 28A(5)(a) (as added: see note 3). A notice ceases to have effect on the giving of notice of its withdrawal under s 28A(5)(a) to any of the persons mentioned in s 28A(3): s 28A(6)(a) (as so added). As to the failure to serve notice see PARA 696.

12 Wildlife and Countryside Act 1981 s 28A(5)(b) (as added: see note 3). As from the time when there is served on the owner or occupier of any land a notice under s 28A(5)(b) confirming a notice of variation with modifications, the notification under s 28(1)(b) (see PARA 674) has effect as so varied: s 28A(7) (as so added). As to the meaning of 'modifications' see PARA 674 note 10. See note 10. As to the failure to serve notice see PARA 696.

13 le by notice under the Wildlife and Countryside Act 1981 s 28A(5) (see the text and notes 11-12).

14 Wildlife and Countryside Act 1981 s 28A(6)(a) (as added: see note 3).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(4) SITES OF SPECIAL SCIENTIFIC INTEREST ETC/676. Notification of additional land adjacent to a site of special scientific interest.

676. Notification of additional land adjacent to a site of special scientific interest.

Where Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales¹, is of the opinion that if land adjacent to a site of special scientific interest² (the 'extra land')³ were combined with the site of special scientific interest (the 'SSSI'), the combined area of land would be of special interest by reason of any of its flora, fauna, or geological or physiographical features, Natural England or the Council may decide to notify that fact⁴. If Natural England or the Council so decides, the persons whom it must notify are:

- 221 (1) the local planning authority⁵, if any, in whose area the extra land is situated⁶;
- 222 (2) every owner and occupier⁷ of any of that extra land⁸; and
- 223 (3) the Secretary of State or the Welsh Ministers⁹.

As from the time when a notification under head (2) is served on the owner or occupier of any land, the notification of the area as a site of special scientific interest has effect as if it included the notification under head (2)¹⁰.

1 See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

2 As to the meaning of 'site of special scientific interest' see PARA 674.

3 For these purposes, 'land' includes any land lying above mean low water mark, and any land covered by estuarial waters: Wildlife and Countryside Act 1981 s 28B(2A) (s 28B(2A)-(2C) added by the Marine and Coastal Access Act 2009 Sch 13 para 5(1), (3)). As to the meaning of 'estuarial waters' see PARA 674 note 3. As to the meaning of 'land' generally see PARA 636 note 1.

The extra land may consist of or include an area of land not falling within the Wildlife and Countryside Act 1981 s 28B(2A), if any of the following conditions are satisfied: (1) the flora, fauna or features that led to the notification of the SSSI is or are also present in the area of the extra land not falling within s 28B(2A); (2) the notification of the SSSI is by reason of any flora or fauna which are dependent (wholly or in part) on anything which takes place in, or is present in, that area; (3) without the inclusion of that area, the identification of the boundary of the SSSI (either in the notification or on the ground for the purposes of exercising functions in relation to it) would be impossible or impracticable: see s 28B(2B), (2C) (as so added). As to guidance in relation to subtidal notifications, and the power to call in subtidal notifications, see ss 28CA, 28CB; and PARA 674 note 3.

No notification under s 28B(2) (see the text and notes 6-9) made before the coming into force of the Marine and Coastal Access Act 2009 Sch 13 para 5 may be questioned in legal proceedings on the ground that the area of land to which the notification relates consists of or includes land lying below mean low water mark: Sch 13 para 5(6).

At the date at which this volume states the law, no day had been appointed for the amendments made by the Marine and Coastal Access 2009 to come into force in relation to Wales.

4 Wildlife and Countryside Act 1981 s 28B(1) (s 28B added by the Countryside and Rights of Way Act 2000 Sch 9 para 1; and the Wildlife and Countryside Act 1981 s 28B(1) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). No such notification may be given until after notice has been given under the Wildlife and Countryside Act 1981 s 28(5)(b) (see PARA 674) confirming the notification under s 28(1) (see PARA 674) relating to the SSSI: s 28B(3) (as so added; and amended by the Marine and Coastal Access Act 2009 Sch 13 para 5(1), (4)). At the date at which this volume states the law, no day had been appointed for the amendment made by the Marine and Coastal Access 2009 to come into force in relation to Wales. The provisions of the Wildlife and Countryside Act 1981 s 28(2)-(3) (see PARA 674) apply for the purposes of s 28B: s 28B(4) (as so added).

5 As to the meaning of 'local planning authority' see PARA 638 note 15.

6 Wildlife and Countryside Act 1981 s 28B(2)(a) (as added (see note 3); and amended by the Marine and Coastal Access 2009 Sch 13 para 5(1), (2)). At the date at which this volume states the law, no day had been appointed for the amendment made by the Marine and Coastal Access 2009 to come into force in relation to Wales. As to the failure to serve notice see PARA 696.

7 As to the meanings of 'owner' and 'occupier' see PARA 674 note 7.

8 Wildlife and Countryside Act 1981 s 28B(2)(b) (as added: see note 3). As to the failure to serve notice see PARA 696. Such a notification must also specify: (1) the area of land constituting the SSSI (s 28B(5)(a) (as so added)); (2) what (as at the date of the notification under s 28B(2)(b)) is specified or contained in the notification under s 28(1)(b) relating to the SSSI by virtue of s 28(4) (see PARA 674) (s 28B(5)(b) (as so added)); and (3) the reasons why Natural England or the Council is of the opinion referred to in s 28B(1) (see the text and notes 1-3) (s 28B(5)(c) (as so added; and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79)). Such notification must also include a statement saying whether or not anything among the matters specified in the notification by virtue of head (3) is particularly relevant to the extra land and, if any such thing is of particular relevance, specifying which: Wildlife and Countryside Act 1981 s 28B(6) (as so added).

9 Wildlife and Countryside Act 1981 s 28B(2)(c) (as added: see note 3). As to the Secretary of State and the Welsh Ministers see PARA 519. The provisions of s 28(5)-(7) (see PARA 674) apply in relation to a notification under s 28B(2) as they apply in relation to a notification under s 28(1): see s 28B(7) (as so added; and amended by the Marine and Coastal Access 2009 Sch 13 para 5(1), (5)). At the date at which this volume states the law, no day had been appointed for the amendment made by the Marine and Coastal Access 2009 to come into force in relation to Wales. As from the time when there is served on the owner or occupier of any land which has been notified under the Wildlife and Countryside Act 1981 s 28B(2)(b) a notice under s 28(5)(b) (as applied by s 28B(7) (see note 3)) confirming the notification under s 28B(2)(b) with modifications, the notification under s 28(1)(b) (as extended by virtue of s 28B(8)) has effect in its modified form: s 28B(9) (as so added). A land charge existing by virtue of s 28(9) (see PARA 674 note 7) must be varied in accordance with a notification under s 28B(2) or under s 28(5)(b) as applied by s 28B(7): s 28B(10) (as so added). As to the meaning of 'modifications' see PARA 674 note 10. As to land charges generally see **LAND CHARGES**. As to the failure to serve notice see PARA 696.

10 Wildlife and Countryside Act 1981 s 28B(8) (as added: see note 3).

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677. Enlargement of a site of specific scientific interest.

Where Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales¹, is of the opinion that any area of land² which includes, but also extends beyond, a site of special scientific interest³ (the 'SSSI') is of special interest by reason of any of its flora, fauna, or geological or physiographical features, Natural England or the Council may decide to notify that fact⁴. If it so decides, the persons whom it must notify are:

- 224 (1) the local planning authority⁵, if any, in whose area the land (including the SSSI) is situated⁶;
- 225 (2) every owner and occupier of any of that land (including the SSSI)⁷; and
- 226 (3) the Secretary of State or the Welsh Ministers⁸.

No such notification may be given until after notice⁹ has been given confirming (with or without modifications) the original notification¹⁰ relating to the SSSI¹¹. As from the time when an enlargement notification¹² is served on the owner or occupier of any land included in the SSSI, the notification in relation to that land which had effect immediately before the service of the enlargement notification ceases to have effect¹³.

1 See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

2 For these purposes, 'land' includes any land lying above mean low water mark, and any land covered by estuarial waters: Wildlife and Countryside Act 1981 s 28C(2A) (s 28C(2A)-(2C) added by the Marine and Coastal Access Act 2009 Sch 13 para 6(1), (3)). As to the meaning of 'estuarial waters' see PARA 674 note 3. As to the meaning of 'land' generally see PARA 636 note 1.

The area of land to which a notification under the Wildlife and Countryside Act 1981 s 28C(2) relates may include an area of land not falling within s 28C(2A), if any of the following conditions is satisfied: (1) the flora, fauna or features that led to the notification of the SSSI is or are also present in the area of land not falling within s 28C(2A); (2) the notification of the SSSI is by reason of any flora or fauna which are dependent (wholly or in part) on anything which takes place in, or is present in, that area; (3) without the inclusion of that area, the identification of the boundary of the SSSI (either in the notification or on the ground for the purposes of exercising functions in relation to it) would be impossible or impracticable: see s 28C(2B), (2C) (as so added). As to guidance in relation to subtidal notifications, and the power to call in subtidal notifications, see ss 28CA, 28CB; and PARA 674 note 3.

No notification under s 28C(2) (see the text and notes 6-8) made before the coming into force of the Marine and Coastal Access Act 2009 Sch 13 para 6 may be questioned in legal proceedings on the ground that the area of land to which the notification relates includes land lying below mean low water mark: Sch 13 para 6(5).

At the date at which this volume states the law, no day had been appointed for the amendments made by the Marine and Coastal Access 2009 to come into force in relation to Wales.

3 As to the meaning of 'site of special scientific interest' see PARA 674.

4 Wildlife and Countryside Act 1981 s 28C(1) (s 28C added by the Countryside and Rights of Way Act 2000 Sch 9 para 1; and the Wildlife and Countryside Act 1981 s 28C(1) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). The enlargement of a site of special scientific interest does not affect anything done under the Wildlife and Countryside Act 1981 ss 28J-28L (see PARAS 686, 688-689): s 28C(8) (as so added).

5 As to the meaning of 'local planning authority' see PARA 638 note 15.

6 Wildlife and Countryside Act 1981 s 28C(2)(a) (as added (see note 4); and amended by the Marine and Coastal Access 2009 Sch 13 para 6(1), (2)). At the date at which this volume states the law, no day had been appointed for the amendment made by the Marine and Coastal Access 2009 to come into force in relation to Wales. The provisions of the Wildlife and Countryside Act 1981 s 28(2)-(8) (see PARA 674) apply in relation to s 28C(2): s 28C(3) (as so added; and amended by the Marine and Coastal Access 2009 Sch 13 para 6(1), (4)). At the date at which this volume states the law, no day had been appointed for the amendment made by the Marine and Coastal Access 2009 to come into force in relation to Wales. As to the failure to serve notice see PARA 696.

7 Wildlife and Countryside Act 1981 s 28C(2)(b) (as added: see note 4). As to the failure to serve notice see PARA 696. Such a notification is a local land charge; and, to the extent that any such land was the subject of a local land charge by virtue of s 28(9) (see PARA 674 note 7), that local land charge is discharged: s 28C(6) (as so added). Any reference to a local land charge existing by virtue of s 28(9) (see PARA 674 note 7) includes a reference to one existing by virtue of s 28C(6) (see PARA 674): s 28C(9)(c) (as so added). As to local land charges generally see **LAND CHARGES** vol 26 (2004 Reissue) PARA 671 et seq.

A notice under s 28E(1)(a) (see PARA 679) and a consent under s 28E(3)(a) (see PARA 679) given before a notification under s 28C(2)(b) continue to have effect: s 28C(7) (as so added). See note 6.

8 Wildlife and Countryside Act 1981 s 28C(2)(c) (as added: see note 4). See note 6. As to the Secretary of State and the Welsh Ministers see PARA 519.

9 Ie a notice under the Wildlife and Countryside Act 1981 s 28(5)(b) (see PARA 674). Such a notification is construed as including a notification under s 28(5)(b) as applied by s 28C(3) (see note 6): s 28C(9)(b) (as added: see note 4).

10 Ie notification under the Wildlife and Countryside Act 1981 s 28(1) or (2) (see PARA 674). Any reference to a notification under s 28(1) is to be construed as including the corresponding notification under s 28C(2): s 28C(9)(a) (as added: see note 4).

11 Wildlife and Countryside Act 1981 s 28C(4) (as added: see note 4).

12 Ie a notification under the Wildlife and Countryside Act 1981 s 28C(2) (see the text and notes 5-8).

13 Wildlife and Countryside Act 1981 s 28C(5) (as added: see note 4).

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678. Denotification.

Where Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales¹, is of the opinion that all or part of a site of special scientific interest² is not of special interest³ or should no longer be the subject of a notification that it is of special interest⁴ because that land has been designated as (or as part of) a marine conservation zone⁵, it may decide to notify that fact⁶. If it so decides, the persons whom it must notify are:

- 227 (1) the local planning authority⁷, if any, in whose area the land⁸ mentioned above is situated⁹;
- 228 (2) every owner and occupier¹⁰ of any of that land¹¹;
- 229 (3) the Secretary of State or the Welsh Ministers¹²;
- 230 (4) the Environment Agency¹³; and
- 231 (5) every relevant undertaker¹⁴ and every internal drainage board¹⁵ whose works, operations or activities may affect the land¹⁶.

Natural England or the Council must also publish a notification¹⁷ in at least one local newspaper circulating in the area in which the land referred to in head (1) is situated¹⁸.

Where such a notification has been given, Natural England or the Council may within the period of nine months beginning with the date on which the notification was served on the Secretary of State or the Welsh Ministers either give notice to the persons mentioned above¹⁹ withdrawing the notification or give notice to those persons confirming the notification, or confirming it in relation to an area of land specified in the notice which is smaller than that specified in the notification²⁰. However, if it does neither the notification ceases to have effect²¹.

1 See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

2 As to the meaning of 'site of special scientific interest' see PARA 674.

3 Ie by virtue of any of the matters mentioned in the Wildlife and Countryside Act 1981 s 28(1) (see PARA 674).

4 Ie under the Wildlife and Countryside Act 1981 s 28(1) (see PARA 674).

5 Ie under the Marine and Coastal Access 2009 s 116: see PARA 666; and **WATER AND WATERWAYS**.

6 Wildlife and Countryside Act 1981 s 28D(1) (s 28D added by the Countryside and Rights of Way Act 2000 Sch 9 para 1; and the Wildlife and Countryside Act 1981 s 28D(1) amended by the Natural Environment and Rural Communities Act 2006 s 56, Sch 11 para 79; and further amended by the Marine and Coastal Access 2009 Sch 13 para 9(1), (2)). At the date at which this volume states the law, no day had been appointed for the amendment made by the Marine and Coastal Access 2009 to come into force in relation to Wales.

7 As to the meaning of 'local planning authority' see PARA 638 note 15.

8 As to the meaning of 'land' see PARA 636 note 1.

9 Wildlife and Countryside Act 1981 s 28D(2)(a) (as added (see note 6); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79; and further amended by the Marine and Coastal Access 2009 Sch 13 para 9(1), (3)). At the date at which this volume states the law, no day had been appointed for the amendment made by the Marine and Coastal Access 2009 to come into force in relation to Wales. The

Wildlife and Countryside Act 1981 s 28(3) (see PARA 674) applies to notification under s 28D(2), (3): s 28D(4) (as so added). As to the failure to serve notice see PARA 696.

10 As to the meanings of 'owner' and 'occupier' see PARA 674 note 7.

11 Wildlife and Countryside Act 1981 s 28D(2)(b) (as added: see note 6). See note 9.

12 Wildlife and Countryside Act 1981 s 28D(2)(c) (as added: see note 6). See note 9. As to the Secretary of State and the Welsh Ministers see PARA 519.

13 Wildlife and Countryside Act 1981 s 28D(2)(d) (as added: see note 6). See note 9. As to the Environment Agency see PARA 528; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq.

14 le within the meaning of the Water Industry Act 1991 s 4(1): see **WATER AND WATERWAYS** vol 100 (2009) PARA 137.

15 As to internal drainage boards see **WATER AND WATERWAYS** vol 101 (2009) PARA 569 et seq.

16 Wildlife and Countryside Act 1981 s 28D(2)(e) (as added: see note 6).

17 le a notification under the Wildlife and Countryside Act 1981 s 28D(2) (see the text and notes 7-16).

18 Wildlife and Countryside Act 1981 s 28D(3) (as added (see note 6); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79; and further amended by the Marine and Coastal Access 2009 Sch 13 para 9(1), (4)). At the date at which this volume states the law, no day had been appointed for the amendment made by the Marine and Coastal Access 2009 to come into force in relation to Wales.

19 Wildlife and Countryside Act 1981 s 28D(5)(a) (as added (see note 6); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). As to the failure to serve notice see PARA 696.

20 Wildlife and Countryside Act 1981 s 28D(5)(b) (as added (see note 6); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). As to the failure to serve notice see PARA 696. A notification under the Wildlife and Countryside Act 1981 s 28D(2) (see the text and notes 7-16) has effect in relation to any land as from the time a notice under s 28D(5)(b) is served on its owner or occupier, and from that time a notification under s 28(1)(b) (see PARA 674) in relation to that land ceases to have effect: s 28D(6) (as so added). A local land charge existing by virtue of s 28(9) (see PARA 674 note 7) is discharged in relation to land which is the subject of a notice under s 28B(5)(b): s 28D(7) (as so added). As to local land charges generally see **LAND CHARGES** vol 26 (2004 Reissue) PARA 671 et seq.

21 Wildlife and Countryside Act 1981 s 28D(5) proviso (as added (see note 6); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79).

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679. Restrictions in carrying out specified operations.

The owner or occupier¹ of any land² included in a site of special scientific interest³ must not, while the notification of an area as a site of special scientific interest⁴ remains in force, carry out, or cause or permit to be carried out, on that land any operation specified in the notification unless:

- 232 (1) one of them has, after service of the notification, given Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales⁵, notice of a proposal to carry out the operation specifying its nature and the land on which it is proposed to carry it out⁶; and
 - 233 (2) one of the following conditions is fulfilled⁷:
- 11 13. (a) the operation is carried out with the written consent of Natural England or the Council⁸;
 - 14. (b) the operation is carried out in accordance with the terms of an agreement⁹;
 - 15. (c) the operation is carried out in accordance with a management scheme¹⁰ or a management notice¹¹.
- 12

A person who, without reasonable excuse, contravenes the above is guilty of an offence¹².

If Natural England or the Council does not consent to the operation, it must give notice saying so to the person who gave notice of the proposal¹³.

Natural England or the Council may, by notice given to every owner and occupier of any of the land included in the site of special scientific interest, or the part of it to which the consent relates, withdraw the consent or modify it, or further modify it, in any way¹⁴. A withdrawal or modification of consent is not to take effect until the expiry of the period for appealing against it or, if an appeal is brought, its withdrawal or final determination¹⁵.

Natural England or the Council has the power to enforce these provisions¹⁶.

1 As to the meanings of 'owner' and 'occupier' see PARA 674 note 7. However, this does not apply to an owner or occupier being an authority to which the Wildlife and Countryside Act 1981 s 28G (see PARA 682) applies acting in the exercise of its functions: s 28E(2) (s 28E added by the Countryside and Rights of Way Act 2000 Sch 9 para 1).

2 As to the meaning of 'land' see PARA 636 note 1.

3 As to the meaning of 'site of specific scientific interest' see PARA 674.

4 I.e. notification under the Wildlife and Countryside Act 1981 s 28(1)(b) (see PARA 674). As to the meaning of 'notice' and 'notification' see PARA 674 note 8.

5 See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

6 Wildlife and Countryside Act 1981 s 28E(1)(a) (as added (see note 1); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79).

7 Wildlife and Countryside Act 1981 s 28E(1)(b) (as added: see note 1).

8 Wildlife and Countryside Act 1981 s 28E(3)(a) (as added (see note 1); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). Such a consent may be given subject to conditions, and for a limited period, as specified in the consent: Wildlife and Countryside Act 1981 s 28E(4) (as so added). Where a consent is subject to conditions or for a limited period it must include a notice of the reasons for imposing the conditions or for the limitation of the period, and also a notice of the rights of appeal under s 28F (see PARA 680): s 28E(7), (8) (s 28E(7) as so added; and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79).

9 Wildlife and Countryside Act 1981 s 28E(3)(b) (as added (see note 1); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 80). The agreement referred to in the text is an agreement under the National Parks and Access to the Countryside Act 1949 s 16 (see PARA 671), the Countryside Act 1968 s 15 (see PARA 687) or the Natural Environment and Rural Communities Act 2006 s 7 (see PARA 671): Wildlife and Countryside Act 1981 s 28E(2)(b).

10 le a management scheme under the Wildlife and Countryside Act 1981 s 28J (see PARA 686).

11 Wildlife and Countryside Act 1981 s 28E(3)(c) (as added: see note 1). The management notice referred to in the text is a management notice under s 28K (see PARA 688).

12 Wildlife and Countryside Act 1981 s 28P(1) (added by the Countryside and Rights of Way Act 2000 Sch 9 para 1). The offence is punishable on summary conviction by a fine not exceeding £20,000 or on conviction on indictment by a fine: Wildlife and Countryside Act 1981 s 28P(1) (as so added).

For the purposes of s 28P(1), (2), (3) (see PARA 683), it is a reasonable excuse in any event for a person to carry out an operation (or to fail to comply with a requirement to send a notice about it) if: (1) the operation in question was authorised by a planning permission granted on an application under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 217 et seq) of or permitted by an authority under the Wildlife and Countryside Act 1981 s 28G which has acted in accordance with s 28I (see PARA 684); or (2) the operation in question was an emergency operation particulars of which (including details of the emergency) were notified to Natural England or the Council as soon as practicable after the commencement of the operation: s 28P(4) (as so added; and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). Head (1) is subject to where an operation needs both a planning permission and the permission of an authority, the Wildlife and Countryside Act 1981 s 28P(4)(a) does not provide reasonable excuse unless both have been obtained: s 28P(5) (as so added).

As to offences under the Wildlife and Countryside Act 1981 committed by a body corporate see PARA 638 note 14. As to offences in relation to sites of special scientific interest see PARA 692.

13 Wildlife and Countryside Act 1981 s 28E(5) (as added (see note 1); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). Where such a notice is given, it must include a notice of the reasons for refusing consent and also a notice of the rights of appeal under the Wildlife and Countryside Act 1981 s 28F (see PARA 680) and the effect of s 28E(9) (see the text and note 15): s 28E(7), (8) (as added (see note 1); and s 28E(7) as amended (see note 8)).

14 Wildlife and Countryside Act 1981 s 28E(6) (as added (see note 1); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). Where such a notice is given, it must include a notice of the reasons for withdrawing or modifying the consent, and also a notice of the rights of appeal under the Wildlife and Countryside Act 1981 s 28F (see PARA 680), the effect of s 28E(9) (see the text and note 15), and the effect of s 28M: s 28E(7), (8) (as added (see note 1); and s 28E(7) as amended (see note 8)).

Where Natural England or the Council, under the Wildlife and Countryside Act 1981 s 28E(6), modifies or withdraws a consent, it must make a payment to any owner or occupier of the land who suffers loss because of the modification or withdrawal: s 28M(1) (s 28M added by the Countryside and Rights of Way Act 2000 Sch 9 para 1; and the Wildlife and Countryside Act 1981 s 28M(1)-(3) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). Natural England or the Council may, if it thinks fit, make one or more payments to any owner or occupier of land in relation to which a management scheme under s 28J (see PARA 686) is in force: s 28M(2) (as so added and amended). The amount of such a payment is to be determined by Natural England or the Council in accordance with guidance given and published by the Ministers: Wildlife and Countryside Act 1981 s 28M(3) (as so added and amended). Section 50(3) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 94(1), (3), Sch 12) applies to the determination of the amount of payments under the Wildlife and Countryside Act 1981 s 28M: s 28M(4) (as so added). Natural England or the Council may, if it thinks fit, make one or more payments to any owner or occupier of land in relation to which a management scheme under s 28J is in force: s 28M(2) (as so added).

15 Wildlife and Countryside Act 1981 s 28E(9) (as added: see note 1).

16 Wildlife and Countryside Act 1981 s 28E(10) (as added (see note 1); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(4) SITES OF SPECIAL SCIENTIFIC INTEREST ETC/680. Appeals in relation to decisions regarding consent to carry out specified operations.

680. Appeals in relation to decisions regarding consent to carry out specified operations.

An owner or occupier may by notice¹ appeal to the Secretary of State or the Welsh Ministers² in relation to a relevant decision³ of Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales⁴, where:

- 234 (1) he has been refused a consent⁵;
- 235 (2) he has been granted a consent but is aggrieved by conditions attached to it, or by the fact that it is for a limited period, or by the length of that period⁶;
- 236 (3) he is aggrieved by the modification of a consent⁷; or
- 237 (4) he is aggrieved by the withdrawal of a consent⁸.

Where Natural England or the Council neither gives consent nor refuses it within the period of four months beginning with the date on which a notice of a proposal to carry out an operation⁹ was sent, the person who gave that notice may treat Natural England or the Council as having refused consent and his appeal is to be determined on that basis¹⁰.

Notice of an appeal must reach the Secretary of State or the Welsh Ministers within the period of two months beginning with the date of the notice giving consent or the notice refusing consent or withdrawing or modifying consent¹¹, or within such longer period as is agreed in writing between Natural England or the Council and the appellant¹².

Before determining an appeal, the Secretary of State or the Welsh Ministers may cause the appeal to take, or continue in, the form of a hearing, which may be held wholly or partly in private if the appellant so requests and the person hearing the appeal agrees, or cause a local inquiry to be held¹³. The Secretary of State or the Welsh Ministers must so act if either party to the appeal asks to be heard in connection with the appeal¹⁴.

On determining an appeal against a decision, the Secretary of State or the Welsh Ministers may:

- 238 (a) affirm the decision¹⁵;
- 239 (b) where the decision was a refusal of consent, direct Natural England or the Council to give consent¹⁶;
- 240 (c) where the decision was as to the terms of a consent, whether the original or a modified one, quash all or any of those terms¹⁷;
- 241 (d) where the decision was a withdrawal or modification of consent, quash the decision¹⁸; and

where power is exercised under head (b), (c) or (d), direct Natural England or the Council as to the terms on which it is to give consent¹⁹.

The Secretary of State or the Welsh Ministers may by regulations made by statutory instrument make provision about appeals²⁰.

¹ As to the meanings of 'owner' and 'occupier' see PARA 674 note 7; and as to the meaning of 'notice' see PARA 674 note 8.

- 2 As to the Secretary of State and the Welsh Ministers see PARA 519. As to the power to delegate appellate functions see PARA 681.
- 3 le consent under the Wildlife and Countryside Council s 28E(3)(a) (see PARA 679).
- 4 See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see PARAS 523-524.
- 5 Wildlife and Countryside Act 1981 s 28F(1)(a) (added by the Countryside and Rights of Way Act 2000 Sch 9 para 1).
- 6 Wildlife and Countryside Act 1981 s 28F(1)(b) (as added: see note 5).
- 7 Wildlife and Countryside Act 1981 s 28F(1)(c) (as added: see note 5).
- 8 Wildlife and Countryside Act 1981 s 28F(1)(d) (as added: see note 5).
- 9 le a notification under the Wildlife and Countryside Act 1981 s 28E(1)(a) (see PARA 679).
- 10 Wildlife and Countryside Act 1981 s 28F(2) (as added (see note 5); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79).
- 11 le notice under the Wildlife and Countryside Act 1981 s 28E(5), (6) (see PARA 679).
- 12 Wildlife and Countryside Act 1981 s 28F(3)(a) (as added: see note 5). However, where s 28F(2) (see the text and note 10) applies, notice of appeal must reach the Secretary of State or the Welsh Ministers within the period of two months beginning immediately after the expiry of the four month period, or within such longer period as is agreed in writing between Natural England or the Council and the appellant: s 28F(3)(b) (as so added; and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79).
- 13 Wildlife and Countryside Act 1981 s 28F(4) (as added: see note 5). The Secretary of State or the Welsh Ministers may appoint any person to exercise on his or their behalf, with or without payment, the function of determining an appeal under the Wildlife and Countryside Act 1981 s 28F or any matter involved in such an appeal: s 28F(8) (as added: see note 5). As to the appointment of such a person see Sch 10A; and PARA 681. The provisions of the Local Government Act 1972 s 250(2)-(5) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 105) apply in relation to hearings or local inquiries under the Wildlife and Countryside Act 1981 s 28F as they apply in relation to local inquiries under the Local Government Act 1972 s 250 but as if the reference to the person appointed to hold the inquiry were a reference to the Secretary of State or the Welsh Ministers or to the person appointed to conduct the hearing or hold the inquiry; and as if the reference to the Minister causing an inquiry to be held were to the Secretary of State or the Welsh Ministers: Wildlife and Countryside Act 1981 s 28F(10) (as so added). The Town and Country Planning Act 1990 s 322A (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 656) applies in relation to a hearing or local inquiry under the Wildlife and Countryside Act 1981 s 28F as it applies in relation to a hearing or local inquiry referred to in the Town and Country Planning Act 1990 s 322A (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 656): Wildlife and Countryside Act 1981 s 28F(11) (as so added).
- 14 Wildlife and Countryside Act 1981 s 28F(4) (as added: see note 5). As to the application of principles of natural justice see also *R v Nature Conservancy Council, ex p Bolton Metropolitan Borough Council* [1995] Env LR 237, [1996] JPL 203.
- 15 Wildlife and Countryside Act 1981 s 28F(5)(a) (as added: see note 5).
- 16 Wildlife and Countryside Act 1981 s 28F(5)(b) (as added (see note 5); and amended by the Natural Environment and the Rural Communities Act 2006 Sch 11 para 79).
- 17 Wildlife and Countryside Act 1981 s 28F(5)(c) (as added: see note 5).
- 18 Wildlife and Countryside Act 1981 s 28F(5)(d) (as added: see note 5).
- 19 Wildlife and Countryside Act 1981 s 28F(5) (as added (see note 5); and amended by the Natural Environment and the Rural Communities Act 2006 Sch 11 para 79).
- 20 Wildlife and Countryside Act 1981 s 28F(6) (as added: see note 5). In particular, such regulations may provide for notices of appeal and supporting documentation required, and how appeals are to be brought and considered, and any such regulations may make different provision for different cases and circumstances: s 28F(6). See the Wildlife and Countryside (Sites of Special Scientific Interest, Appeals) (Wales) Regulations 2002,

SI 2002/1772; and the Sites of Special Scientific Interest (Appeals) Regulations 2009, SI 2009/197. A statutory instrument containing regulations under the Wildlife and Countryside Act 1981 s 28F(6) is subject to annulment: see s 28F(7) (as so added).

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681. Delegation of appellate functions.

The Secretary of State or the Welsh Ministers¹ may delegate his or their appellate functions², and an appointment³ of a person to exercise those functions must be in writing and may:

- 242 (1) relate to any particular appeal or matter specified in the appointment or to appeals or matters of a description so specified⁴;
- 243 (2) provide for any function to which it relates to be exercisable by the appointed person⁵ either unconditionally or subject to the fulfilment of such conditions as may be specified in the appointment⁶; and
- 244 (3) by notice⁷ in writing given to the appointed person, be revoked at any time by the Secretary of State in respect of any appeal or matter which has not been determined by the appointed person before that time⁸.

An appointed person, in relation to any appeal or matter to which his appointment relates, has the same powers and duties as the Secretary of State or the Welsh Ministers, other than:

- 245 (a) any function of making regulations⁹;
- 246 (b) any function of holding an inquiry or other hearing or of causing an inquiry or other hearing to be held¹⁰; or
- 247 (c) any function of appointing a person for the purpose of enabling persons to appear before and be heard by the person so appointed, or of referring any question or matter to that person¹¹.

If either of the parties to an appeal or matter expresses a wish to appear before and be heard by the appointed person, the appointed person must give both of them an opportunity of appearing and being heard¹². Whether or not a party to an appeal or matter has asked for an opportunity to appear and be heard, the appointed person may hold a local inquiry or other hearing in connection with the appeal or matter, and, if the Secretary of State so directs or the Welsh Ministers so direct, hold a local inquiry in connection with the appeal or matter¹³.

Anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates is to be treated for all purposes as done or omitted to be done by the Secretary of State or the Welsh Ministers¹⁴.

1 As to the Secretary of State and the Welsh Ministers see PARA 519.

2 As to appeals see PARA 680.

3 I.e. an appointment under the Wildlife and Countryside Act 1981 s 28F(8) (see PARA 680), or s 28L(10) (see PARA 689): see the Wildlife and Countryside Act 1981 Sch 10A para 1(b).

4 Wildlife and Countryside Act 1981 Sch 10A para 2(a) (Sch 10A added by the Countryside and Rights of Way Act 2000 Sch 9 para 7).

5 'Appointed person' means a person appointed under s 28F(8) (see PARA 680), or s 28L(10) (see PARA 689): Sch 10A para 1(a) (as added (see note 4)).

6 Wildlife and Countryside Act 1981 Sch 10A para 2(b) (as added: see note 4).

7 As to the meaning of 'notice' see PARA 674 note 8.

8 Wildlife and Countryside Act 1981 Sch 10A para 2(c) (Sch 10A as added: see note 4). Where the appointment of the appointed person is revoked in respect of any appeal or matter, the Secretary of State or the Welsh Ministers must, unless determining the appeal or matter himself or themselves, appoint another person under s 28F(8) (see PARA 680), or s 28L(10) (see PARA 689), to determine the appeal or matter instead: Sch 10A para 5(1) (as so added). Where such a new appointment is made, the consideration of the appeal or matter, or any hearing in connection with it, must be begun afresh: Sch 10A para 5(2) (as so added). This does not require any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made: Sch 10A para 5(3) (as so added).

9 Wildlife and Countryside Act 1981 Sch 10A para 3(a) (as added: see note 4).

10 Wildlife and Countryside Act 1981 Sch 10A para 3(b) (as added: see note 4).

11 Wildlife and Countryside Act 1981 Sch 10A para 3(c) (as added: see note 4).

12 Wildlife and Countryside Act 1981 Sch 10A para 4(1) (as added: see note 4).

13 Wildlife and Countryside Act 1981 Sch 10A para 4(2) (as added: see note 4). Where an appointed person holds a local inquiry or other hearing by virtue of the Wildlife and Countryside Act 1981 Sch 10A, an assessor may be appointed by the Secretary of State or the Welsh Ministers to sit with the appointed person at the inquiry or hearing and advise him on any matters arising, notwithstanding that the appointed person is to determine the appeal or matter: Sch 10A para 4(3) (as so added). Subject to s 28F(8) (see PARA 680), or s 28L(10) (see PARA 689), the cost of a local inquiry held under this Schedule is to be defrayed by the Secretary of State or the Welsh Ministers: Sch 10A para 4(4) (as so added).

14 Wildlife and Countryside Act 1981 Sch 10A para 6(1) (Sch 10A as added: see note 4). This does not apply: (1) for the purposes of so much of any contract made between the Secretary of State or the Welsh Ministers and the appointed person as relates to the exercise of the function (Sch 10A para 6(2)(a) (as so added)); or (2) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in Sch 10A para 6(1) (Sch 10A para 6(2)(b) (as so added)).

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682. General duty of authorities.

In exercising their functions so far as their exercise is likely to affect the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest¹ is of special interest², the following authorities:

- 248 (1) a Minister of the Crown³, or a government department⁴;
- 249 (2) the Welsh Ministers⁵;
- 250 (3) a local authority⁶;
- 251 (4) a person holding an office: (a) under the Crown; (b) created or continued in existence by a public general Act of Parliament; or (c) the remuneration in respect of which is paid out of money provided by Parliament⁷;
- 252 (5) a statutory undertaker⁸; and
- 253 (6) any other public body of any description⁹,

must take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest¹⁰.

1 As to the meaning of 'site of special scientific interest' see PARA 674.

2 Wildlife and Countryside Act 1981 s 28G(1) (s 28G added by the Countryside and Rights of Way Act 2000 Sch 9 para 1).

3 Ie within the meaning of the Ministers of the Crown Act 1975: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 363.

4 Wildlife and Countryside Act 1981 s 28G(3)(a) (as added: see note 2).

5 Wildlife and Countryside Act 1981 s 28G(3)(b) (as added: see note 2). As to the Welsh Ministers see PARA 519.

6 Wildlife and Countryside Act 1981 s 28G(3)(c) (as added: see note 2).

7 Wildlife and Countryside Act 1981 s 28G(3)(d) (as added: see note 2).

8 Wildlife and Countryside Act 1981 s 28G(3)(e) (as added (see note 2); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 81(1), (2), Sch 12). 'Statutory undertaker' means a person who is or is deemed to be a statutory undertaker for the purposes of any provision of the Town and Country Planning Act 1990 Pt 11 (ss 262-283) (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1009 et seq); Wildlife and Countryside Act 1981 s 28G(4) (s 28G as added (see note 2); and s 28G(4) added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 81(1), (3)).

9 Wildlife and Countryside Act 1981 s 28G(3)(f) (as added: see note 2).

10 Wildlife and Countryside Act 1981 s 28G(2) (as added: see note 2).

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683. Duty of authorities in carrying out operations.

An authority¹ must give notice² to Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales³, before carrying out, in the exercise of its functions, operations likely to damage any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest⁴. This applies even if the operations would not take place on land⁵ included in a site of special scientific interest⁶. In response to such a notice, Natural England or the Council may send a notice saying that it does not assent to the proposed operations, or assenting to them, with or without conditions⁷. However, if it does not send a notice assenting, with or without conditions, within the period of 28 days beginning with the date of the notice of operations⁸ it is to be treated as having declined to assent⁹.

Where Natural England or the Council does not assent or the authority proposes to carry out the operations otherwise than in accordance with the terms of the assent, the authority must not carry out the operations unless the authority has notified Natural England or the Council of the date on which it proposes to start the operations¹⁰, and how, if at all, it has taken account of any written advice it received from Natural England or the Council, before the date of such notification, in response to the notice of operations¹¹. When carrying out the operations, the authority must comply with the requirements that: (1) the authority carry out the operations in such a way as to give rise to as little damage as is reasonably practicable in all the circumstances to the flora, fauna or geological or physiographical features by reason of which the site is of special interest, taking account, in particular, of any advice received from Natural England or the Council¹²; and (2) the authority restore the site to its former condition, so far as is reasonably practicable, if any such damage does occur¹³.

An authority which, in the exercise of its functions, carries out an operation which damages any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest without first complying with the relevant notification requirements¹⁴, is, unless there was a reasonable excuse for carrying out the operation without complying, guilty of an offence¹⁵.

1 le an authority falling within PARA 682 heads (1)-(6).

2 As to the meaning of 'notice' see PARA 674 note 8.

3 See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

4 Wildlife and Countryside Act 1981 s 28H(1) (s 28H added by the Countryside and Rights of Way Act 2000 Sch 9 para 1; and the Wildlife and Countryside Act 1981 s 28H(1) amended by the Natural Environment and Rural Communities Act 2000 Sch 11 para 79). As to the meaning of 'site of special scientific interest' see PARA 674.

5 As to the meaning of 'land' see PARA 636 note 1.

6 Wildlife and Countryside Act 1981 s 28H(2) (as added: see note 4).

7 Wildlife and Countryside Act 1981 s 28H(3) (as added (see note 4); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79).

8 le a notice under the Wildlife and Countryside Act 1981 s 28H(1) (see the text and notes 1-4).

9 Wildlife and Countryside Act 1981 s 28H(3) (as added (see note 4); and amended (see note 7)).

10 The notification must be given after the expiry of the period of 28 days beginning with the date of the notice under the Wildlife and Countryside Act 1981 s 28H(1) (see the text and notes 1-4): s 28H(5) (as added (see note 4); and amended by the Natural Environment and Rural Communities Act 2006 Sch 9 para 79). The date on which it proposes to start the operations must be after the expiry of the period of 28 days beginning with the date of the notification under the Wildlife and Countryside Act 1981 s 28H(5): s 28H(5)(a) (as so added).

11 Wildlife and Countryside Act 1981 s 28H(4)(a), (5) (as added (see note 4); and amended by the Natural Environment and Rural Communities Act 2006 Sch 9 para 79).

12 le advice received from Natural England or the Council, before the date of the notification, in response to the notice under s 28H(1).

13 Wildlife and Countryside Act 1981 s 28H(4)(b), (6) (as added (see note 4); and s 28H(4) as amended (see note 11)). An authority acting in the exercise of its functions which, having complied with the Wildlife and Countryside Act 1981 s 28H(1), fails without reasonable excuse (see PARA 692) to comply with s 28H(4)(b) is guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine: s 28P(3) (added by the Countryside and Rights of Way Act 2000 Sch 9 para 1). As to offences in relation to sites of special scientific interest see PARA 692.

14 le without first complying with the Wildlife and Countryside Act 1981 s 28H(1) (see the text and notes 1-4); or, if it has complied with s 28H(1), without first complying with s 28H(4)(a) (see the text and notes 10-11)

15 Wildlife and Countryside Act 1981 s 28P(2) (as added: see note 13). Such an authority is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine: see s 28P(2) (as so added). As to offences under the Wildlife and Countryside Act 1981 committed by a body corporate see PARA 638 note 14.

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684. Duty of authorities in authorising operations.

Where the permission¹ of an authority² is needed before operations may be carried out, the authority must give notice³ of the proposed operations to Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales⁴ before permitting the carrying out of operations likely to damage any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest⁵ is of special interest. This applies even if the operations would not take place on land⁶ included in a site of special scientific interest⁷.

The authority must wait until the expiry of the period of 28 days beginning with the date of the notice before deciding whether to give its permission, unless Natural England or the Council has notified the authority that it need not wait until then⁸.

The authority must take any advice received from Natural England or the Council into account in deciding whether or not to permit the proposed operations, and, if it does decide to do so, in deciding what (if any) conditions are to be attached to the permission⁹. Where Natural England or the Council advises against permitting the operations, or advises that certain conditions should be attached, but the authority does not follow that advice, the authority must give notice of the permission, and of its terms, to Natural England or the Council, including a statement of how (if at all) the authority has taken account of the advice, and must not grant a permission which would allow the operations to start before the end of the period of 21 days beginning with the date of that notice¹⁰.

An authority which, in the exercise of its functions, permits the carrying out of an operation which damages any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest without first complying with the relevant requirements¹¹, is, unless there was a reasonable excuse for permitting the carrying out of the operation without complying, guilty of an offence¹².

1 'Permission', in relation to any operations, includes authorisation, consent, and any other type of permission and 'permit' and 'permitting' are to be construed accordingly: Wildlife and Countryside Act 1981 s 28I(7) (ss 28I, 28P added by the Countryside and Rights of Way Act 2000 Sch 9 para 1).

2 ie an authority falling within PARA 682 heads (1)-(6).

3 As to the meaning of 'notice' see PARA 674 note 8.

4 Wildlife and Countryside Act 1981 s 28I(1), (2) (as added (see note 1); and s 28I(2) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

5 As to the meaning of 'site of special scientific interest' see PARA 674.

6 As to the meaning of 'land' see PARA 636 note 1.

7 Wildlife and Countryside Act 1981 s 28I(3) (as added: see note 1).

8 Wildlife and Countryside Act 1981 s 28I(4) (as added (see note 1); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79).

9 Wildlife and Countryside Act 1981 s 28I(5) (as added (see note 1); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79).

10 Wildlife and Countryside Act 1981 s 28I(6) (as added (see note 1); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79).

11 le without complying first with the Wildlife and Countryside Act 1981 s 28I(2), or (4), or (6).

12 Wildlife and Countryside Act 1981 s 28P(5A) (s 28P as added (see note 1); and s 28P (5A), (5B) added by the Natural Environment and Rural Communities Act 2006 s 55(1), (2)). Such an authority is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine: Wildlife and Countryside Act 1981 s 28P(5A) (as so added). It is a reasonable excuse in any event for an authority to permit the carrying out of an operation without first complying with s 28I(2), (4) or (6) if the operation in question was an emergency operation particulars of which (including details of the emergency) were notified to Natural England or the Council as soon as practicable after the permission was given: s 28P(5B) (as so added). As to offences under the Wildlife and Countryside Act 1981 committed by a body corporate see PARA 638 note 14. As to offences in relation to sites of special scientific interest see PARA 692.

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685. Ministerial guidance.

The ministers¹ must from time to time, after consulting with Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales², and such persons appearing to represent other interests concerned as they consider appropriate, prepare codes containing such recommendations, advice and information as they consider proper for the guidance of persons exercising functions in relation to areas of special scientific interest³, and persons affected or likely to be affected by the exercise of any of those functions, and revise any such code by revoking, varying, amending or adding to the provisions of the code in such manner as they think fit⁴. Codes may be printed and sold to the public⁵.

1 As to the meaning of 'ministers' see PARA 638 note 1.

2 See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

3 Ie functions under the Wildlife and Countryside Act 1981 ss 28-32 (see PARA 674 et seq).

4 Wildlife and Countryside Act 1981 s 33(1) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 82). See eg *Code of Guidance for Sites of Special Scientific Interest* (issued by the Department for Environment, Food and Rural Affairs).

5 Wildlife and Countryside Act 1981 s 33(3).

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686. Management schemes.

Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales¹, may formulate a management scheme for all or part of a site of special scientific interest². A management scheme is a scheme for:

- 254 (1) conserving the flora, fauna, or geological or physiographical features by reason of which the land³ (or the part of it to which the scheme relates) is of special interest⁴; or
- 255 (2) restoring them⁵; or
- 256 (3) both⁶.

Natural England or the Council must serve notice⁷ of a proposed management scheme on every owner and occupier⁸ of any of the land (or the part of it to which the scheme would relate); but it may be served on them only after they have been consulted about the proposed management scheme⁹. The notice of a proposed management scheme must include a copy of the proposed scheme¹⁰. The notice must specify the time, not being less than three months from the date of the giving of the notice, within which, and the manner in which, representations or objections with respect to the proposed management scheme may be made; and Natural England or the Council must consider any representation or objection duly made¹¹. Where a notice has been given, Natural England or the Council may within the period of nine months beginning with the date on which the notice was served on the last of the relevant owners and occupiers¹² either: (a) give notice to the relevant owners and occupiers withdrawing the notice¹³; or (b) give notice to them confirming the management scheme (with or without modifications)¹⁴.

A notice ceases to have effect on the giving of a notice of withdrawal under head (a) to any of the relevant owners and occupiers; or if not withdrawn or confirmed by notice¹⁵, within the nine month period, at the end of that period¹⁶.

Natural England or the Council may at any time cancel or propose the modification of a management scheme¹⁷.

An agreement¹⁸ relating to a site of special scientific interest in Wales¹⁹ may provide for any matter for which a management scheme relating to that site provides, or could provide²⁰.

1 See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

2 Wildlife and Countryside Act 1981 s 28J(1) (s 28J added by the Countryside and Rights of Way 2000 Sch 9 para 1; and the Wildlife and Countryside Act 1981 s 28J(1) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). As to sites of special scientific interest see PARA 674.

3 As to the meaning of 'land' see PARA 636 note 1.

4 Wildlife and Countryside Act 1981 s 28J(2)(a) (as added: see note 2).

5 Wildlife and Countryside Act 1981 s 28J(2)(b) (as added: see note 2).

6 Wildlife and Countryside Act 1981 s 28J(2)(c) (as added: see note 2).

7 As to the meaning of 'notice' see PARA 674 note 8.

8 As to the meanings of 'owner' and 'occupier' see PARA 674 note 7. The owners and occupiers upon whom the notice must be served (the 'relevant owners and occupiers') are (1) if it is served with the notification under s 28(1)(b) (see PARA 674), or later but before the notification referred to in s 28(5)(b) (see PARA 674), the owners and occupiers referred to in s 28(1)(b) (see PARA 674) (s 28J(5)(a) (as added: see note 2)); and (2) if it is served with the notification under s 28(5)(b) (see PARA 674) or later, the owners and occupiers of such of the land as remains subject to the notification (s 28J(5)(b) (as so added)).

9 Wildlife and Countryside Act 1981 s 28J(3) (as added (see note 2); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). Such a notice may be served with the notification under the Wildlife and Countryside Act 1981 s 28(1)(b) (see PARA 674) or afterwards: s 28J(4). As to the failure to give notice see PARA 696.

10 Wildlife and Countryside Act 1981 s 28J(6) (as added: see note 2).

11 Wildlife and Countryside Act 1981 s 28J(7) (as added (see note 2); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79).

12 As to the meaning of 'relevant owners and occupiers' see note 8.

13 Wildlife and Countryside Act 1981 s 28J(8)(a) (s 28J as added (see note 2); and s 28J(8) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79).

14 Wildlife and Countryside Act 1981 s 28J(8)(b) (as added (see note 2); and amended (see note 13)). Where notice is given under s 28J(8), the management scheme has effect from the time the notice is served on all of the relevant owners or occupiers: s 28J(8) (as so added and amended). As to the failure to serve notice see PARA 696. The power to confirm a management scheme with modifications must not be exercised so as to make complying with it more onerous: s 28J(10) (as added (see note 2); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79).

15 I.e. notice under the Wildlife and Countryside Act 1981 s 28J(8) (see the text and notes 12-14).

16 Wildlife and Countryside Act 1981 s 28J(9).

17 Wildlife and Countryside Act 1981 s 28J(11) (as added (see note 2); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). In relation to the cancellation of a management scheme, the provisions of the Wildlife and Countryside Act 1981 s 28J(3)-(5) apply, and in relation to a proposal to modify a management scheme, s 28J(3)-(10) apply, as they apply in relation to a proposal for a management scheme: s 28J(12) (as added: see note 2).

18 I.e. under the National Parks and Access to the Countryside Act 1949 s 16 (see PARA 671) or the Countryside Act 1968 s 15 (see PARA 687).

19 The provisions of the National Parks and Access to the Countryside Act 1949 s 16 or the Countryside Act 1968 s 15 do not apply to England: see PARAS 671, 687.

20 Wildlife and Countryside Act 1981 s 28J(13) (as added: see note 2).

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687. Agreements relating to areas of special scientific interest in Wales.

As respects land in Wales which is or forms part of an area which in the opinion of the Countryside Council for Wales¹ is of special interest by reason of its flora, fauna or geological or physiographical features², where, for the purpose of conserving those flora, fauna or geological or physiographical features, it appears to the Council expedient to do so, it may enter into an agreement with the owners, lessees and occupiers of the land (or of any other land) which imposes restrictions on the exercise of rights over land by those who can be bound by the agreement³. Any such agreement may: (1) provide for the carrying out on the land of such work and the doing of such other things there as may be expedient for the purposes of the agreement⁴; (2) provide for the cost of those matters to be defrayed either by the owners or other persons, or by the Council, or partly one way and partly in another⁵; and (3) contain such other provisions as to the making of payments by the Council as may be specified in the agreement⁶. Tenants for life and other limited owners may enter these agreements⁷.

1 The National Parks and Access to the Countryside Act 1949 has effect as if the Countryside Act 1968 s 15 were included in the National Parks and Access to the Countryside Act 1949 Pt III (ss 15-22): Countryside Act 1968 s 15(7). As to the Countryside Council for Wales see **PARA 524**.

2 Countryside Act 1968 s 15(1) (amended by the Nature Conservancy Council Act 1973 Sch 1 para 9; the Wildlife and Countryside Act 1981 Sch 17 Pt I; and the Natural Environment and Rural Communities Act 2006 Sch 11 para 48(1)(2)(a)).

3 Countryside Act 1968 s 15(2) (amended by the Environmental Protection Act 1990 Sch 9 para 4(1), (2), Sch 16 Pt VI; the Countryside and Rights of Way Act 2000 s 75(3); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 48(1), (2)(b)). Where the Law of Property Act 1925 s 79 (burden of covenant running with the land: see **EQUITY** vol 16(2) (Reissue) **PARA 618**) applies to any such restrictions, the Council has the like rights as respects the enforcement of the restrictions as if the Council had at all material times been the absolute owner in possession of ascertained land adjacent to the land in respect of which the restriction is sought to be enforced, and capable of being benefited by the restriction, and the restriction had been expressed to be for the benefit of that adjacent land: Countryside Act 1968 s 15(4). The Law of Property Act 1925 s 84 (discharge or modification of restrictive covenants: see **EQUITY** vol 16(2) (Reissue) **PARA 630**) does not apply to such a restriction: Countryside Act 1968 s 15(4). As to restrictive covenants see **EQUITY** vol 16(2) (Reissue) **PARA 613** et seq.

4 Countryside Act 1968 s 15(3)(a).

5 Countryside Act 1968 s 15(3)(b) (s 15(3)(b), (c) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 48(1), (2)(b)).

6 Countryside Act 1968 s 15(3)(c) (as amended: see note 5). As to payments under such agreements see the Wildlife and Countryside Act 1981 s 50 (amended by the Agriculture Act 1986 s 20(6); the Countryside and Rights of Way Act 2000 s 79; and the Natural Environment and Rural Communities Act 2006 Sch 11 para 94(1)-(4), Sch 12).

7 See the Countryside Act 1968 s 15(5), applying the Forestry Act 1967 s 5(4), Sch 2. See further **FORESTRY** vol 52 (2009) **PARA 119**. As to the phasing out of strict settlements see the Trusts of Land and Appointment of Trustees Act 1996 Sch 1; and **REAL PROPERTY** vol 39(2) (Reissue) **PARA 65**; **SETTLEMENTS** vol 42 (Reissue) **PARA 676**.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(4) SITES OF SPECIAL SCIENTIFIC INTEREST ETC/688. Management notices.

688. Management notices.

Where it appears to Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales¹, that an owner or occupier of land² is not giving effect to a provision of a management scheme³, and as a result any flora, fauna or geological or physiographical features by reason of which the land is of special interest are being inadequately conserved or restored, it may if it thinks fit serve a notice⁴ on him (a 'management notice')⁵. Such a notice is a notice that requires the owner or occupier to carry out such work on the land, and do such other things with respect to it, as are specified in the notice, and to do so before the dates or within the periods so specified⁶. The work and other things specified in the notice must appear to Natural England or the Council to be measures which it is reasonable to require in order to ensure that the land is managed in accordance with the management scheme⁷. Natural England or the Council may not serve a management notice unless it is satisfied that it is unable to conclude, on reasonable terms, an agreement with the owner or occupier as to the management of the land in accordance with the management scheme⁸.

If any of the work or other things required by a management notice have not been done within the period or by the date specified in it, Natural England or the Council may enter the land, and any other land, and carry out the work, or do the other things; and may recover from the owner or occupier on whom the notice was served any expenses reasonably incurred by Natural England or the Council in carrying out the work or doing the other things⁹.

1 See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

2 As to the meanings of 'owner' and 'occupier' see PARA 674 note 7; and as to the meaning of 'land' see PARA 636 note 1.

3 As to management schemes see PARA 686.

4 As to the meaning of 'notice' see PARA 674 note 8.

5 Wildlife and Countryside Act 1981 s 28K(1) (s 28K added by the Countryside and Rights of Way Act 2000 Sch 9 para 1; and the Wildlife and Countryside Act 1981 s 28K(1) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). A copy of the management notice must be served on every other owner and occupier of the land: Wildlife and Countryside Act 1981 s 28K(6) (as so added). The management notice must explain the effect of s 28K(7), (8) (see the text and note 9), s 28L (see PARA 689), s 28M(2)-(4) (see PARA 679 note 14): s 28K(5) (as so added).

6 Wildlife and Countryside Act 1981 s 28K(3) (as added: see note 5).

7 Wildlife and Countryside Act 1981 s 28K(4) (as added (see note 5); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79).

8 Wildlife and Countryside Act 1981 s 28K(2) (as added: see note 5).

9 Wildlife and Countryside Act 1981 s 28K(7) (as added (see note 5); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). If an appeal is brought against the management notice, and on the final determination of the appeal the notice is affirmed (with or without modifications), the Wildlife and Countryside Act 1981 s 28K(7) applies as if the references to the management notice were to the notice as affirmed: s 28K(8) (as so added).

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689. Appeals against management notices.

A person who is served with a management notice¹ may appeal against its requirements to the Secretary of State or the Welsh Ministers²; and a management notice does not take effect until the expiry of the period for appealing against it or if an appeal is brought, its withdrawal or final determination³. An appeal may be on the ground that some other owner or occupier of the land⁴ should take all or any of the measures specified in the management notice, or should pay all or part of their cost⁵. In determining an appeal whose grounds are or include such grounds⁶, the Secretary of State or the Welsh Ministers may vary the management notice so as to impose its requirements (or some of them) on any such other person as is referred to in the grounds, or determine that a payment is to be made by any such other person to the appellant⁷.

Before determining an appeal, the Secretary of State or the Welsh Ministers may: (1) cause the appeal to take, or continue in, the form of a hearing, which may be held wholly or partly in private if the appellant so requests and the person hearing the appeal agrees⁸; or (2) cause a local inquiry to be held⁹. If either party to the appeal asks to be heard in connection with the appeal, the Secretary of State or the Welsh Ministers must act as mentioned in head (1) or (2)¹⁰. On determining the appeal, the Secretary of State or the Welsh Ministers may quash or affirm the management notice; and it may be affirmed either in its original form or with such modifications as thought fit¹¹.

The Secretary of State or the Welsh Ministers may appoint any person to exercise on his or their behalf, with or without payment, the function of determining an appeal or any matter involved in such an appeal¹².

The Secretary of State or the Welsh Ministers may by regulations made by statutory instrument make provision about appeals¹³.

1 As to management notices see PARA 688.

2 As to the Secretary of State and the Welsh Ministers see PARA 519.

3 Wildlife and Countryside Act 1981 s 28L(1) (s 28L added by the Countryside and Rights of Way Act 2000 Sch 9 para 1).

4 As to the meanings of 'owner' and 'occupier' see PARA 674 note 7; and as to the meaning of 'land' see PARA 636 note 1.

5 Wildlife and Countryside Act 1981 s 28L(2) (as added: see note 3). Where the grounds of appeal are, or include, that mentioned in s 28L(2), the appellant must serve a copy of his notice of appeal on each other person referred to: s 28L(3) (as so added).

6 ie grounds under the Wildlife and Countryside Act 1981 s 28L(2) (see the text and notes 4-5).

7 Wildlife and Countryside Act 1981 s 28L(6) (as added: see note 3). In exercising such powers, the Secretary of State or the Welsh Ministers must take into account, as between the appellant and any of the other people referred to in s 28L(2) (see the text and notes 4-5): (1) their relative interests in the land, considering both the nature of the interests and the rights and obligations arising under or by virtue of them (s 28L(7)(a) (as so added)); (2) their relative responsibility for the state of the land which gives rise to the requirements of the management notice (s 28L(7)(b) (as so added)); and (3) the relative degree of benefit to be derived from carrying out the requirements of the management notice (s 28L(7)(c) (as so added)).

8 Wildlife and Countryside Act 1981 s 28L(4)(a) (as added: see note 3). The provisions of the Local Government Act 1972 s 250(2)-(5) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 105) apply in relation to hearings

or local inquiries under the Wildlife and Countryside Act 1981 s 28L as they apply in relation to local inquiries under the Local Government Act 1972 s 250 but as if the reference to the person appointed to hold the inquiry were a reference to the Secretary of State or the Welsh Ministers or to the person appointed to conduct the hearing or hold the inquiry and as if the reference to the Minister causing an inquiry to be held were a reference to the Secretary of State or the Welsh Ministers: Wildlife and Countryside Act 1981 s 28L(12) (as so added). The Town and Country Planning Act 1990 s 322A (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 656) applies in relation to a hearing or local inquiry under the Wildlife and Countryside Act 1981 s 28L as it applies in relation to a hearing or local inquiry referred to in the Town and Country Planning Act 1990 s 322A (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 656): Wildlife and Countryside Act 1981 s 28L(13) (as so added).

9 Wildlife and Countryside Act 1981 s 28L(4)(b) (as added: see note 3). See note 8.

10 Wildlife and Countryside Act 1981 s 28L(4) (as added: see note 3). This also applies where, in a case falling within s 28L(2) (see the text and notes 4-5), any of the other persons mentioned under s 28L(2) asks to be heard in connection with the appeal: s 28L(4) (as so added).

11 Wildlife and Countryside Act 1981 s 28L(5) (as added: see note 3).

12 Wildlife and Countryside Act 1981 s 28L(10) (as added: see note 3). As to the appointment of such a person see Sch 10A; and PARA 681.

13 See the Wildlife and Countryside Act 1981 s 28L(8) (as added: see note 3). In particular, such regulations may provide for the period within which and the manner in which appeals are to be brought, and the manner in which they are to be considered; and any such regulations may make different provision for different cases or circumstances: s 28L(8) (as so added). See the Sites of Special Scientific Interest (Appeals) Regulations 2009, SI 2009/197; and the Wildlife and Countryside (Sites of Special Scientific Interest, Appeals) (Wales) Regulations 2002, SI 2002/1772.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(4) SITES OF SPECIAL SCIENTIFIC INTEREST ETC/690. Compulsory purchase.

690. Compulsory purchase.

Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales¹, may acquire compulsorily all or any part of a site of special scientific interest² where:

- 257 (1) Natural England or the Council is satisfied that it is unable to conclude, on reasonable terms, an agreement³ with the owner or occupier⁴ as to the management of the land⁵;
- 258 (2) Natural England or the Council has entered into such an agreement, but it is satisfied that it has been breached in such a way that the land is not being managed satisfactorily⁶.

A dispute about whether or not there has been such a breach of the agreement is to be determined by an arbitrator appointed for the purpose⁷. Where Natural England or the Council has acquired land compulsorily in such a manner, it may manage it or dispose of it, or of any interest in it, on terms designed to secure that the land is managed satisfactorily⁸.

Natural England or the Council may acquire compulsorily all or part of land which it appears to that body expedient to acquire for the purpose of conserving flora, fauna, or geological or physiographical features of special interest⁹, where:

- 259 (a) Natural England or the Council is satisfied that it is unable to conclude, on reasonable terms, an SSSI agreement¹⁰; or
- 260 (b) Natural England or the Council has entered into an SSSI agreement, but is satisfied it has been breached in such a way that the flora, fauna or geological or physiographical features are not being conserved satisfactorily¹¹.

A dispute about whether or not there has been such a breach of the agreement is to be determined by an arbitrator appointed for the purpose¹². Where Natural England or the Council has acquired land compulsorily in such a manner, it may itself take steps to conserve the flora, fauna or geological or physiographical features in question, or dispose of the land on terms designed to secure that those flora, fauna or features are satisfactorily conserved¹³.

1 See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

2 Wildlife and Countryside Act 1981 s 28N(1) (s 28N added by the Countryside and Rights of Way Act 2000 Sch 9 para 1; and the Wildlife and Countryside Act 1981 s 28N(1), (2), (4) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). As to sites of special scientific interest see PARA 674.

3 As to agreements see PARA 671.

4 As to the meanings of 'owner' and 'occupier' see PARA 674 note 7.

5 As to the meaning of 'land' see PARA 636 note 1.

6 Wildlife and Countryside Act 1981 s 28N(2) (as added and amended: see note 2). The provisions of the National Parks and Access to the Countryside Act 1949 s 103 (see PARA 668) apply for the purposes of the Wildlife and Countryside Act 1981 s 28N: s 28N(5) (as so added).

7 Wildlife and Countryside Act 1981 s 28N(3) (as added: see note 2).

8 Wildlife and Countryside Act 1981 s 28N(4) (as added and amended: see note 2).

9 Countryside Act 1968 s 15A(1) (s 15A added by the Countryside and Rights of Way Act 2000 s 75(4); and the Countryside Act 1968 s 15A(1) substituted by the Natural Environment and Rural Communities Act 2006 Sch 11 para 49(1), (2)).

10 Countryside Act 1968 s 15A(2)(a) (a 15A as added (see note 9); and s 15A(2) amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 49(1), (3)). 'SSSI agreement' means, in relation to Natural England, an agreement under the Natural Environment and Rural Communities Act 2006 s 7 (see [PARA 671](#)) imposing, for the purpose of conserving flora, fauna, or geological or physiographical features of special interest, restrictions on the exercise of rights over land by persons having an interest in the land, or, in relation to the Council, such an agreement as is referred to in the Countryside Act 1968 s 15(2) (see [PARA 687](#)): s 15A(6) (s 15A as so added; and s 15A(6) added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 49(1), (6)).

11 Countryside Act 1968 s 15A(2)(b) (as added (see note 9); and amended (see note 10)).

12 Countryside Act 1968 s 15A(3) (as added (see note 9)).

13 Countryside Act 1968 s 15A(4) (as added (see note 9); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 49(1), (4)).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(4) SITES OF SPECIAL SCIENTIFIC INTEREST ETC/691. Change of owner or occupier.

691. Change of owner or occupier.

Where the owner of land¹ included in a site of special scientific interest² disposes of³ any interest of his in the land or becomes aware that it is occupied by an additional or a different occupier⁴, the owner must send a notice⁵ to Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales⁶, before the end of the period of 28 days beginning with the date on which he disposed of the interest or became aware of the change in occupation⁷. The notice must specify the land concerned and in a case where: (1) the owner disposes of his interest in the land, the date on which the owner disposed of the interest in the land, and the name and address of the person to whom he disposed of the interest⁸; or (2) the owner becomes aware that the land is occupied by an additional or a different occupier, the date on which the change of occupation took place (or, if the owner does not know the exact date, an indication of when to the best of the owner's knowledge it took place), and, as far as the owner knows them, the name and address of the additional or different occupier⁹. A person who fails without reasonable excuse to comply with these requirements is guilty of an offence¹⁰.

1 As to the meaning of 'owner' see PARA 674 note 7; and as to the meaning of 'land' see PARA 636 note 1.

2 As to the meaning of 'site of special scientific interest' see PARA 674.

3 For these purposes, an owner 'disposes of' an interest in land if he disposes of it by way of sale, exchange or lease, or by way of the creation of any easement, right or privilege, or in any other way except by way of mortgage: Wildlife and Countryside Act 1981 s 28Q(5) (s 28Q added by the Countryside and Rights of Way Act 2000 Sch 9 para 1).

4 Wildlife and Countryside Act 1981 s 28Q(1) (as added: see note 3). As to the meaning of 'occupier' see PARA 674 note 7.

5 As to the meaning of 'notice' see PARA 674 note 8.

6 See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

7 Wildlife and Countryside Act 1981 s 28Q(2) (as added (see note 3); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79).

8 Wildlife and Countryside Act 1981 s 28Q(3)(a) (as added: see note 3).

9 Wildlife and Countryside Act 1981 s 28Q(3)(b) (as added: see note 3).

10 Wildlife and Countryside Act 1981 s 28Q(4) (as added: see note 3). Such a person is liable on summary conviction to a fine not exceeding level 1 on the standard scale: s 28Q(4) (as so added). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to offences under the Wildlife and Countryside Act 1981 committed by a body corporate see PARA 638 note 14.

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692. Offences in relation to sites of special scientific interest.

A person, other than an authority¹ acting in the exercise of its functions, who without reasonable excuse²:

- 261 (1) intentionally or recklessly destroys or damages any of the flora, fauna, or geological or physiographical features by reason of which land³ is of special interest, or intentionally or recklessly disturbs any of those fauna⁴; and
- 262 (2) knew that what he destroyed, damaged or disturbed was within a site of special scientific interest⁵,

is guilty of an offence⁶.

Similarly, a person, other than an authority acting in the exercise of its functions, who without reasonable excuse:

- 263 (a) intentionally or recklessly destroys or damages any of the flora, fauna, or geological or physiographical features by reason of which a site of special scientific interest is of special interest⁷; or
- 264 (b) intentionally or recklessly disturbs any of those fauna⁸,

is also guilty of an offence⁹.

A person who without reasonable excuse fails to comply with a requirement of a management notice is guilty of an offence¹⁰.

1 Is an authority falling within PARA 682 heads (1)-(6).

2 It is in any event a reasonable excuse for a person to do what is mentioned in the Wildlife and Countryside Act 1981 s 28P(6) or s 28P(6A) if s 28P(4)(a) or s 28P(4)(b) (see PARA 679) (reading references to operation as references to the destruction, damage or disturbance) is satisfied in relation to what was done, and where appropriate, s 28P(5) (see PARA 679) (reading references to operation as references to the destruction, damage or disturbance) is also satisfied: s 28P(7) (s 28P added by the Countryside and Rights of Way Act 2000 Sch 9 para 1; and the Wildlife and Countryside Act 1981 s 28P(7) amended by the Natural Environment and Rural Communities Act 2006 s 55(1), (4)).

3 As to the meaning of 'land' see PARA 636 note 1.

4 Wildlife and Countryside Act 1981 s 28P(6)(a) (as added: see note 2).

5 Wildlife and Countryside Act 1981 s 28P(6)(b) (as added: see note 2). As to the meaning of 'site of special scientific interest' see PARA 674.

6 Wildlife and Countryside Act 1981 s 28P(6) (as added: see note 2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine: s 28P(6) (as so added). In determining the amount of any fine to be imposed on a person convicted of an offence under s 28P, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence: s 28P(9) (as so added). Proceedings in England and Wales for an offence under s 28P must not, without the consent of the Director of Public Prosecutions, be taken by a person other than Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales: s 28P(10) (as so added; and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). As to Natural England and the Countryside Council for Wales see the Wildlife and Countryside Act 1981 s

27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78); and see also PARAS 523-524.

Proceedings in England and Wales for a summary offence under the Wildlife and Countryside Act 1981 Pt II (ss 27AA-52) may be brought within the period of six months beginning with the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge: s 51A(1) (s 51A added by the Natural Environment and Rural Communities Act 2006 Sch 6 para 4). However this does not authorise the commencement of proceedings for an offence more than two years after the date on which the offence was committed: Wildlife and Countryside Act 1981 s 51A(2) (as so added). For these purposes a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in his opinion to warrant the proceedings came to his knowledge is conclusive evidence of that fact: s 51A(3) (as so added). A certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved: s 51A(4).

As to offences under the Wildlife and Countryside Act 1981 committed by a body corporate see PARA 638 note 14.

7 Wildlife and Countryside Act 1981 s 28P(6A)(a) (s 28P(6A) added by the Natural Environment and Rural Communities Act 2006 s 55(1), (3)).

8 Wildlife and Countryside Act 1981 s 28P(6A)(b) (as added: see note 7).

9 Wildlife and Countryside Act 1981 s 28P(6A) (as added: see note 7). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 28P(6A) (as so added). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

10 Wildlife and Countryside Act 1981 s 28P(8) (as added: see note 2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine: s 28P(8) (as so added). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(4) SITES OF SPECIAL SCIENTIFIC INTEREST ETC/693. Restoration following an offence.

693. Restoration following an offence.

Where a person is convicted of an offence¹ which involved the destruction of or damage to any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest² is of special interest, the court by which he is convicted, in addition to dealing with him in any other way, may make an order requiring him to carry out, within such period as may be specified in the order, such operations (whether on land included in the site of special scientific interest or not) as may be so specified for the purpose of restoring the site of special scientific interest to its former condition³.

Where such an order is made by a magistrates' court, the period specified in the order must not begin to run in any case until the expiration of the period for the time being prescribed by law for the giving of notice of appeal against a decision of a magistrates' court or where notice of appeal is given within the period so prescribed, until determination of the appeal⁴. At any time before an order has been complied with or fully complied with, the court by which it was made may, on the application of the person against whom it was made, discharge or vary the order if it appears to the court that a change in circumstances has made compliance or full compliance with the order impracticable or unnecessary⁵.

If, within the period specified in an order, the person against whom it was made fails, without reasonable excuse, to comply with it, he is liable on summary conviction to a fine⁶, and in the case of a continuing offence, to a further fine⁷. If, within the period specified in an order, any operations specified in the order have not been carried out, Natural England or the Countryside Council for Wales⁸ may enter the land and carry out those operations and recover from the person against whom the order was made any expenses reasonably incurred by it in doing so⁹.

¹ ie an offence under the Wildlife and Countryside Act 1981 s 28P(1) (see PARA 679), s 28P(2), (3) (see PARA 683), or s 28P(6), (6A) (see PARA 692).

² As to the meaning of 'site of special scientific interest' see PARA 674.

³ Wildlife and Countryside Act 1981 s 31(1) (s 31(1) substituted by the Countryside and Rights of Way Act 2000 Sch 9 para 3(1), (2), Sch 11 paras 1, 20(2); and amended by the Natural Environment and Rural Communities Act 2006 s 55(5)). Such an order made on conviction on indictment must be treated for the purposes of the Criminal Appeal Act 1968 s 30 (see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 389) and s 42(1), (2) (repealed) as an order for the restitution of property; and where by reason of the quashing by the Court of Appeal of a person's conviction any such order does not take effect, and on further appeal to the Supreme Court the conviction is restored by the Supreme Court, any order under the Wildlife and Countryside Act 1981 s 31 which could be made on his conviction by the court which convicted him may then be made: s 31(2) (amended by the Constitutional Reform Act 2005 Sch 9 para 37).

⁴ Wildlife and Countryside Act 1981 s 31(3).

⁵ Wildlife and Countryside Act 1981 s 31(4).

⁶ Wildlife and Countryside Act 1981 s 31(5). The fine must not exceed level 5 on the standard scale: s 31(5) (a) (amended by the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

⁷ Wildlife and Countryside Act 1981 s 31(5). The fine must not exceed £100 for each day during which the offence continues after conviction: s 31(5)(b).

8 See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see *PARAS* 523-524.

9 Wildlife and Countryside Act 1981 s 31(6) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(4) SITES OF SPECIAL SCIENTIFIC INTEREST ETC/694. Byelaws.

694. Byelaws.

Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales¹, may make byelaws for the protection of a site of special scientific interest².

¹ See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

² Wildlife and Countryside Act 1981 s 28R(1) (s 28R added by the Countryside and Rights of Way Act 2000 Sch 9 para 1; and the Wildlife and Countryside Act 1981 s 28R(1) amended by the Natural England and Rural Communities Act 2006 Sch 11 para 79). The National Parks and Access to the Countryside Act 1949 s 20(2), (3) (see PARA 672) and ss 106-107 (see PARAS 648, 672) apply in relation to byelaws under the Wildlife and Countryside Act 1981 s 28R as they apply in relation to byelaws under the National Parks and Access to the Countryside Act 1949 s 20 (reading references to nature reserves as references to sites of special scientific interest): Wildlife and Countryside Act 1981 s 28R(2) (as so added).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(4) SITES OF SPECIAL SCIENTIFIC INTEREST ETC/695. Notices and signs.

695. Notices and signs.

Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales¹, may, on any land² included in a site of special scientific interest³, put up and maintain notices or signs relating to the site⁴. Natural England or the Council may also remove any notice or sign so put up⁵. Any other person who intentionally or recklessly and without reasonable excuse takes down, damages, destroys or obscures such a notice or sign is guilty of an offence⁶.

1 See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

2 As to the meaning of 'land' see PARA 636 note 1.

3 As to the meaning of 'site of special scientific interest' see PARA 674.

4 Wildlife and Countryside Act 1981 s 28S(1) (s 28S added by the Natural Environment and Rural Communities Act 2006 s 58(1)).

5 Wildlife and Countryside Act 1981 s 28S(2) (as added: see note 4).

6 Wildlife and Countryside Act 1981 s 28S(3) (as added: see note 4). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 28(4) (as so added). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(4) SITES OF SPECIAL SCIENTIFIC INTEREST ETC/696. Failure to serve notice.

696. Failure to serve notice.

Where the relevant conservation body¹ has taken all reasonable steps to ensure that notice² in relation to:

- 265 (1) notification of sites of special scientific interest³;
- 266 (2) confirmation or withdrawal of notification⁴;
- 267 (3) varying notification⁵;
- 268 (4) confirmation or withdrawal of variation of notification⁶;
- 269 (5) notification of additional land to be included in a site of special scientific interest⁷;
- 270 (6) confirmation or withdrawal of notification⁸;
- 271 (7) notification of enlargement of a site of special scientific interest⁹;
- 272 (8) confirmation or withdrawal of notification of enlargement¹⁰;
- 273 (9) denotification¹¹;
- 274 (10) withdrawal or confirmation of denotification¹²;
- 275 (11) notice of proposed management scheme¹³;
- 276 (12) withdrawal or confirmation of management scheme¹⁴,

is served on every owner and occupier of any land¹⁵ to which the notice relates¹⁶ but has failed to do so¹⁷, the validity of the notice is not affected by the failure to serve it on every owner and occupier of the land¹⁸.

If the relevant conservation body becomes aware of its failure to serve a notice on an owner or occupier, it must serve a copy of the notice on that owner or occupier¹⁹.

1 'Relevant conservation body' means, in relation to land in an area of England, Natural England or, before 1 October 2006 (ie the commencement date of s 27AA), English Nature; and in relation to land in an area of Wales, the Countryside Council for Wales: Wildlife and Countryside Act 1981 s 70B(7) (as so added). As to the dissolution of English Nature and transfer of its powers to Natural England see PARA 523.

2 As to the meanings of 'notice' and 'notification' see PARA 674 note 8.

3 Ie under the Wildlife and Countryside Act 1981 s 28(1) (see PARA 674). As to the meaning of 'sites of special scientific interest' see PARA 674.

4 Ie under the Wildlife and Countryside Act 1981 s 28(5) (see PARA 674).

5 Ie under the Wildlife and Countryside Act 1981 s 28A(3) (see PARA 675).

6 Ie under the Wildlife and Countryside Act 1981 s 28A(5) (see PARA 675).

7 Ie under the Wildlife and Countryside Act 1981 s 28B(2) (see PARA 676).

8 Ie under the Wildlife and Countryside Act 1981 s 28B(7) (see PARA 676).

9 Ie under the Wildlife and Countryside Act 1981 s 28C(2) (see PARA 677).

10 Ie under the Wildlife and Countryside Act 1981 s 28C(3) (see PARA 677).

11 Ie under the Wildlife and Countryside Act 1981 s 28D(2) (see PARA 678).

12 Ie under the Wildlife and Countryside Act 1981 s 28D(5) (see PARA 678).

13 le under the Wildlife and Countryside Act 1981 s 28J(3) (see PARA 686).

14 le under the Wildlife and Countryside Act 1981 s 28J(8) (see PARA 686).

15 As to the meanings of 'owner' and 'occupier' see PARA 674 note 7; and as to the meaning of 'land' see PARA 636 note 1.

16 See the Wildlife and Countryside Act 1981 s 70B(1)(a), (2) (s 70B added by the Natural Environment and Rural Communities Act 2006 s 57). For the purposes of the Wildlife and Countryside Act 1981 ss 28-28Q (see PARA 674 et seq), the time when the notice is to be treated as having been served is the time when the relevant conservation body took the last of the steps referred to in s 70B(1)(a): s 70B(4) (as so added).

Nothing in s 70B(3) or s 70B(4) renders the owner or occupier liable in relation to anything done or omitted to be done before 31 May 2006 (ie the commencement date of s 70B), or under s 28P(1) (see PARA 679) or s 28Q(4) (see PARA 691) in relation to anything done or omitted to be done before the copy of the notice is served under s 70B(5) (see the text and note 19): s 70B(6) (as so added).

17 See the Wildlife and Countryside Act 1981 s 70B(1)(b) (as added: see note 16).

18 See the Wildlife and Countryside Act 1981 s 70B(3) (as added: see note 16). See note 16.

19 Wildlife and Countryside Act 1981 s 70B(5) (as added: see note 16).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(4) SITES OF SPECIAL SCIENTIFIC INTEREST ETC/697. Duties where there is an application for a farm grant.

697. Duties where there is an application for a farm grant.

Where an application for a farm capital grant¹ is made as respects expenditure incurred or to be incurred for the purpose of activities on notified land, or land included in a site of special scientific interest, the appropriate minister² must, so far as consistent with the purpose of the grant provisions³, so exercise his functions as to further the conservation of the flora, fauna or geological or physiographical features of the land; and where Natural England (in relation to England) or the Countryside Council for Wales (in relation to Wales)⁴ objects to the making of a grant on the ground that the activities in question have destroyed or damaged the flora or fauna or those features, or will do so, the appropriate minister must not make the grant except after considering the objection and consulting with the Secretary of State or the Welsh Ministers⁵. Where, in consequence of an objection by Natural England or the Council, an application for a grant is refused on the ground that the activities will have such an effect, Natural England or the Council must within three months of receiving notice of the minister's decision, offer to enter into a management agreement⁶ with the applicant, imposing restrictions relating to the activities and providing for payments⁷.

¹ I.e. a grant under a scheme made under the Agriculture Act 1970 s 29 or the European Communities Act 1972 s 2(2); Wildlife and Countryside Act 1981 s 32(3) (substituted by the Agriculture Act 1986 s 20). As to farm capital grants see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1345 et seq. As to the duties of agriculture ministers with respect to the countryside see PARA 640.

² I.e. the minister responsible for determining the application: Wildlife and Countryside Act 1981 s 32(3) (as substituted: see note 1).

³ I.e. either the scheme under which the grant is made and the Agriculture Act 1970 s 29 or the regulations under which the grant is made and the Community instrument in pursuance of which regulations were made: Wildlife and Countryside Act 1981 s 32(3) (as substituted: see note 1).

⁴ See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

⁵ Wildlife and Countryside Act 1981 s 32(1) (amended by the Agriculture Act 1986 s 20; the Countryside and Rights of Way Act 2000 Sch 9 para 4, Sch 16 Pt III; and the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). See also the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 88. As to the Secretary of State and the Welsh Ministers see PARA 519.

⁶ I.e. under the National Parks and Access to the Countryside Act 1949 s 16 or the Countryside Act 1968 s 15 (see PARA 687).

⁷ Wildlife and Countryside Act 1981 s 32(2) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 79). As to payments under such agreements see the Wildlife and Countryside Act 1981 s 50.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(4) SITES OF SPECIAL SCIENTIFIC INTEREST ETC/698. Limestone pavement orders.

698. Limestone pavement orders.

Natural England, in relation to England, or the Countryside Council for Wales, in relation to Wales¹, must notify any local planning authority² of any limestone pavement³ in that authority's area⁴. Where it appears to the Secretary of State or the Welsh Ministers⁵, or the relevant authority⁶, that the character or appearance of any land so notified would be likely to be adversely affected by the removal of the limestone or by its disturbance in any way whatever, an order (a 'limestone pavement order') may be made designating the land and prohibiting the removal or disturbance of limestone on or in it⁷. It is an offence without reasonable excuse to remove or disturb limestone on or in any land designated by a limestone pavement order⁸.

Powers of entry are conferred on persons authorised in writing by the Secretary of State or the Welsh Ministers or the relevant authority to ascertain whether an order should be made in relation to the land or if an offence is being, or has been, committed there⁹.

1 See the Wildlife and Countryside Act 1981 s 27AA (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 78). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

2 As to the meaning of 'local planning authority' see PARA 638 note 15.

3 'Limestone pavement' means an area of limestone which lies wholly or partly exposed on the surface of the ground and has been fissured by natural erosion: Wildlife and Countryside Act 1981 s 34(6).

4 Wildlife and Countryside Act 1981 s 34(1) (substituted by the Natural Environment and Rural Communities Act 2006 Sch 11 para 83(1), (2)).

5 As to the Secretary of State and the Welsh Ministers see PARA 519.

6 'Relevant authority' means, in relation to a non-metropolitan county in England, the county planning authority, and in relation to any other area in England, the local planning authority; and in relation to any area in Wales, the local planning authority: Wildlife and Countryside Act 1981 s 34(6) (substituted by the Local Government Act 1985 Sch 3 para 7(2); and amended by the Local Government (Wales) Act 1994 Sch 16 para 65(3); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 83(1), (5)(b), Sch 12).

7 Wildlife and Countryside Act 1981 s 34(2). As to the making, confirmation and coming into operation of limestone pavement orders see Sch 11 (amended by the Countryside and Rights of Way Act 2000 Sch 16 Pt III). No order may be made in relation to Crown land unless the appropriate authority has consented to the making of it: Wildlife and Countryside Act 1981 s 67(2) (amended by the Countryside and Rights of Way Act 2000 Sch 16 Pt III). As to the meaning of 'appropriate authority' see PARA 639 note 2 (definition applied by the Wildlife and Countryside Act 1981 s 67(4)). Subject to this provision, the Wildlife and Countryside Act 1981 Pt II (ss 27A-52) (except s 51) applies to Crown land, that is to say, land an interest in which belongs to Her Majesty in the right of the Crown or the Duchy of Lancaster or to the Duchy of Cornwall, and land an interest in which belongs to a government department or is held on trust for Her Majesty for the purposes of a government department: s 67(1).

A limestone pavement order made by a relevant authority may be amended or revoked by that authority after consultation with Natural England or the Countryside Council for Wales, as appropriate; one made by the Secretary of State or the Welsh Ministers or a relevant authority may be amended or revoked by the Secretary of State or the Welsh Ministers after such consultation, but in the case of an order made by an authority, it may be amended only after consultation with that authority: s 34(3) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 83(1), (3)).

8 Wildlife and Countryside Act 1981 s 34(4) (amended by the Countryside and Rights of Way Act 2000 s 78). The penalty on summary conviction is a fine not exceeding the statutory maximum, and on conviction on

indictment a fine: Wildlife and Countryside Act 1981 s 34(4) (as so amended). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

It is a reasonable excuse in any event for a person to remove or disturb limestone or cause or permit its removal or disturbance if it was authorised by planning permission: s 34(5) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 54(1); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 83(1), (4), Sch 12). As to offences under the Wildlife and Countryside Act 1981 committed by a body corporate see PARA 638 note 14.

9 Wildlife and Countryside Act 1981 s 51(1)(l) (substituted by the Countryside and Rights of Way Act 2000 s 80(1), (2)); Wildlife and Countryside Act 1981 s 51(2)(b) (amended by the Countryside and Rights of Way Act 2000 s 103(2)). Any person who intentionally obstructs a person acting in the exercise of such a power is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Wildlife and Countryside Act 1981 s 51(4) (amended by the Criminal Justice Act 1982 s 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

A person acting in the exercise of a power conferred by the Wildlife and Countryside Act 1981 s 51(1) may:

- 88 (1) use a vehicle or a boat to enter the land (s 51(3A)(a) (s 51(3A), (3B) added by the Countryside and Rights of Way Act 2000 s 80(1), (7));
- 89 (2) take a constable with him if he reasonably believes he is likely to be obstructed (s 51(3A)(b) as so added);
- 90 (3) take with him equipment and materials needed for the purpose for which he is exercising the power of entry (s 51(3A)(c) as so added);
- 91 (4) take samples of the land and of anything on it (s 51(3A)(d) as so added).

If in the exercise of a power conferred by s 51(1) a person enters land which is unoccupied or from which the occupier is temporarily absent, he must on his departure leave it as effectively secured against unauthorised entry as he found it: s 51(3B) (as so added).

A person must not demand admission as of right to any occupied land unless either 24 hours' notice of intended entry has been given, or the purpose of entry is to ascertain whether an offence is being or has been committed: Wildlife and Countryside Act 1981 s 51(3) (amended by the Countryside and Rights of Way Act 2000 s 80(1), (5)).

It is the duty of a relevant authority to compensate any person who has sustained damage as a result of:

- 92 (a) the exercise of a power conferred by s 51(1) by a person authorised to do so by that relevant authority; or
- 93 (b) the failure of a person so authorised to perform the duty imposed on him by s 51(3B),

except where the damage is attributable to the fault of the person who sustained it; and any dispute as to a person's entitlement to compensation under this provision or as to its amount must be referred to an arbitrator to be appointed, in default of agreement, by the Secretary of State or the Welsh Ministers: s 51(5) (added by the Countryside and Rights of Way Act 2000 s 80(1), (7)).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(5) GREEN BELT/699. Green Belts generally.

(5) GREEN BELT

699. Green Belts generally.

Green Belts are now an essential part of planning policy¹: the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open². The Green Belt around London was established under the Green Belt (London and Home Counties) Act 1938³, but Green Belts may be, and have been, established elsewhere based on regional and strategic planning guidance, development plans and structure and local plans⁴.

Land may be included in a Green Belt for the following purposes:

- 277 (1) to check the unrestricted sprawl of large built-up areas;
- 278 (2) to prevent neighbouring towns from merging into one another;
- 279 (3) to assist in safeguarding the countryside from encroachment;
- 280 (4) to preserve the setting and special character of historic towns; and
- 281 (5) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land⁵.

Once a Green Belt has been defined, the use of land in it has a positive role to play in fulfilling the following objectives:

- 282 (a) to provide opportunities for access to the open countryside for the urban population;
- 283 (b) to provide opportunities for outdoor sport and outdoor recreation near urban areas;
- 284 (c) to retain attractive landscapes, and enhance landscapes, near to where people live;
- 285 (d) to improve damaged and derelict land around towns;
- 286 (e) to secure nature conservation interest; and
- 287 (f) to retain land in agricultural, forestry and related uses⁶.

1 As to Green Belts, and as to planning generally, see **TOWN AND COUNTRY PLANNING**.

2 *Planning Policy Guidance 2: Green Belts* para 1.4.

3 As to the Green Belt (London and Home Counties) Act 1938 see **TOWN AND COUNTRY PLANNING**.

4 As to the planning system generally see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 1. As to regional planning see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 72 et seq; as to local development planning see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 89 et seq; and as to development control generally see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 213 et seq.

5 *Planning Policy Guidance 2: Green Belts* para 1.5.

6 *Planning Policy Guidance 2: Green Belts* para 1.6.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(6) HEDGEROWS/700. Power to make regulations for the protection of hedgerows.

(6) HEDGEROWS

700. Power to make regulations for the protection of hedgerows.

The Secretary of State or the Welsh Ministers¹ may, by regulations² make provision for, or in connection with, the protection of important hedgerows³ in England or Wales⁴. Regulations may provide for the application of, or include provisions comparable to, any provision contained in the planning Acts⁵ and may, in particular, make provision prohibiting the removal of, or the carrying out of prescribed acts in relation to, a hedgerow except in prescribed cases⁶. Provision as to an appeal against a determination or decision under the regulations may also be made⁷. Regulations may make different provision for different cases, including different provision in relation to different descriptions of hedgerow, different descriptions of person, different areas or localities or different circumstances⁸. Provision may be made for a person who contravenes, or fails to comply with, any prescribed provision of the regulations to be guilty of an offence⁹. Before making any regulations, the Secretary of State or the Welsh Ministers must consult:

- 288 (1) such bodies appearing to him or them to be representative of persons whose business interests are likely to be affected by the proposed regulations¹⁰;
- 289 (2) such bodies appearing to him or them to be representative of the interests of owners or occupiers of land¹¹;
- 290 (3) such bodies appearing to him or them to be representative of the interests of local authorities¹²;
- 291 (4) such bodies whose statutory functions¹³ include the provision to Ministers of the Crown of advice concerning matters relating to environmental conservation¹⁴; and
- 292 (5) such bodies not falling within heads (1) to (4) above¹⁵,

as he or they may consider appropriate¹⁶.

1 As to the Secretary of State and the Welsh Ministers see PARA 519.

2 'Regulations' means regulations made by statutory instrument: Environment Act 1995 s 97(8).

3 'Hedgerow' includes any stretch of hedgerow: Environment Act 1995 s 97(8). The question whether a hedgerow is or is not 'important' for the purposes of s 97 must be determined in accordance with prescribed criteria: s 97(2). As to the prescribed criteria for determining important hedgerows see PARA 702.

4 Environment Act 1995 s 97(1). See the Hedgerow Regulations 1997, SI 1997/1160; and PARA 701 et seq. For the purpose of facilitating the protection of important hedgerows, such regulations may also make provision in relation to other hedgerows in England and Wales: Environment Act 1995 s 97(3). This power to protect hedgerows should be distinguished from the provisions relating to controls on high hedges which interfere with the enjoyment of adjacent domestic property: see Anti-social Behaviour Act 2003 Pt 8 (ss 65-84); and **NUISANCE** vol 78 (2010) PARA 131 et seq.

5 The 'planning Acts' has the same meaning as it has in the Town and Country Planning Act 1990 s 336(1): Environment Act 1995 s 97(8). See further **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 2.

6 Environment Act 1995 s 97(4)(a). 'Remove', in relation to a hedgerow, means uproot or otherwise destroy: s 97(8). Reference to removing, or carrying out an act in relation to, a hedgerow includes a reference to causing or permitting another to remove, or carry out an act in relation to, a hedgerow: s 97(9).

7 See the Environment Act 1995 s 97(4)(b).

8 Environment Act 1995 s 97(5).

9 Environment Act 1995 s 97(4)(c). As to such offences and the penalties for them see s 97(4)(d), (e); Hedgerows Regulations 1997, SI 1997/1160, reg 7(3); and PARAS 703-704.

10 Environment Act 1995 s 97(6)(a).

11 Environment Act 1995 s 97(6)(b).

12 Environment Act 1995 s 97(6)(c).

13 'Statutory functions' means functions conferred or imposed under any enactment: Environment Act 1995 s 97(8).

14 Environment Act 1995 s 97(6)(d). 'Environmental conservation' means conservation of the natural beauty or amenity, or flora or fauna, of England or Wales or of features of archaeological or historic interest in England or Wales: s 97(8).

15 Environment Act 1995 s 97(6)(e).

16 Environment Act 1995 s 97(6).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(6) HEDGEROWS/701. Protected hedgerows.

701. Protected hedgerows.

The Hedgerow Regulations¹ make provision for the protection of hedgerows² in England and Wales³. The regulations apply to any hedgerow, or any stretch of hedgerow forming part of a hedgerow, growing in, or adjacent to, any common land⁴, protected land⁵, or land used for agriculture⁶, forestry or the breeding or keeping of horses, ponies or donkeys, if it has a continuous length of, or exceeding, 20 metres or if it has a continuous length of less than 20 metres and at each end meets (whether by intersection or junction) another hedgerow⁷. However, the regulations do not apply to any hedgerow within the curtilage of, or marking a boundary of the curtilage of, a dwelling-house⁸.

A hedgerow which meets (whether by intersection or junction) another hedgerow is to be treated as ending at the point of intersection or junction⁹. For the purposes of ascertaining the length of any hedgerow, any gap¹⁰ resulting from a contravention of the regulations, and any gap not exceeding 20 metres, is to be treated as part of the hedgerow¹¹.

1 See the Hedgerows Regulations 1997, SI 1997/1160, reg 1.

2 As to the meaning of 'hedgerow' see PARA 700 note 3.

3 See PARA 702 et seq.

4 'Common land' has the same meaning as in the Commons Registration Act 1965 (see **COMMONS** vol 13 (2009) PARA 407), and references to common land include town or village greens within the meaning of that Act (see **COMMONS** vol 13 (2009) PARA 403): Hedgerows Regulations 1997, SI 1997/1160, reg 2(1).

5 'Protected land' means: (1) land managed as a nature reserve in pursuance of the National Parks and Access to the Countryside Act 1949 s 21 (see PARA 665); (2) land in relation to which a notification under the Wildlife and Countryside Act 1981 s 28 (see PARA 674) is in force: Hedgerows Regulations 1997, SI 1997/1160, reg 2(1).

6 'Agriculture' includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purposes of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes; and 'agricultural' is to be construed accordingly: Hedgerows Regulations 1997, SI 1997/1160, reg 2(1).

7 Hedgerows Regulations 1997, SI 1997/1160, reg 3(1), (2).

8 Hedgerows Regulations 1997, SI 1997/1160, reg 3(3).

9 Hedgerows Regulations 1997, SI 1997/1160, reg 3(4).

10 'Gap', in relation to a hedgerow, means any opening whether or not it is filled: Hedgerows Regulations 1997, SI 1997/1160, reg 2(1).

11 Hedgerows Regulations 1997, SI 1997/1160, reg 3(5).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(6) HEDGEROWS/702. Criteria for determining important hedgerows.

702. Criteria for determining important hedgerows.

A hedgerow¹ is 'important' if it, or the hedgerow of which it is a stretch, has existed for 30 years or more² and satisfies at least one of the following criteria³:

- 293 (1) the hedgerow marks the boundary, or part of the boundary, of at least one historic parish or township⁴;
- 294 (2) the hedgerow incorporates an archaeological feature which is (a) included in the schedule of monuments compiled by the Secretary of State under the Ancient Monuments and Archaeological Areas Act 1979⁵; or (b) recorded at the relevant date in a sites and monuments record⁶;
- 295 (3) the hedgerow (a) is situated wholly or partly within an archaeological site included or recorded as mentioned in head (2) above or on land adjacent to and associated with such a site⁷; and (b) is associated with any monument or feature on that site⁸;
- 296 (4) the hedgerow (a) marks the boundary of a pre-1600 AD estate or manor recorded at the relevant date⁹ in a sites and monuments record or in a document held at that date at a Record Office¹⁰; or (b) is visibly related to any building or other feature of such an estate or manor¹¹;
- 297 (5) the hedgerow (a) is recorded in a document held at the relevant date at a Record Office as an integral part of a field system pre-dating the Inclosure Acts¹²; or (b) is part of, or visibly related to, any building¹³ or other feature associated with such a system, and that system (i) is substantially complete; or (ii) is of a pattern which is recorded in a document prepared before the relevant date by a local planning authority¹⁴ for the purposes of development control within the authority's area, as a key landscape characteristic¹⁵;
- 298 (6) the hedgerow (a) contains certain listed species¹⁶; or (b) is referred to in a record held immediately before the relevant date by a biological record centre maintained by, or on behalf of, a local authority¹⁷, and in a form recognised by Natural England¹⁸, the Countryside Council for Wales or the Joint Nature Conservation Committee¹⁹, as having contained any such species (i) in the case of animals and birds, within the period of five years immediately before the relevant date; (ii) in the case of plants, within the period of ten years immediately before the relevant date²⁰;
- 299 (7) the hedgerow includes (a) at least seven woody species²¹; (b) at least six woody species, and has associated with it at least three of the specified features²²; (c) at least six woody species, including one of the following: black-poplar tree (*Populus nigra* ssp *betulifolia*); large-leaved lime (*Tilia platyphyllos*); small-leaved lime (*Tilia cordata*); wild service-tree (*Sorbus torminalis*)²³; or (d) at least five woody species, and has associated with it at least four of the specified features²⁴;
- 300 (8) the hedgerow (a) is adjacent to a bridleway or footpath²⁵, a restricted byway²⁶ or a byway open to all traffic²⁷; and (b) includes at least four woody species²⁸ and at least two of the specified features²⁹.

1 As to the meaning of 'hedgerow' see PARA 700 note 3. As to the hedgerows to which the Hedgerows Regulations 1997, SI 1997/1160, apply see PARA 701.

2 Hedgerows Regulations 1997, SI 1997/1160 reg 4(a).

3 Hedgerows Regulations 1997, SI 1997/1160 reg 4(b). The relevant criteria are listed in Sch 1 Pt II (see the heads 1-8 in the text): see reg 4(b).

4 Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 1. For this purpose, 'historic' means existing before 1850: Sch 1 Pt II para 1.

5 Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 2(a). As to the schedule of monuments under the Ancient Monuments and Archaeological Areas Act 1979 see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 1010. As to the Secretary of State see PARA 519.

6 Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 2(b). 'Sites and monuments record' means a record of archaeological features and sites adopted (1) by resolution of a local authority within the meaning of the Local Government Act 1972 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 23); or (2) in Greater London, by the Historic Buildings and Monuments Commission: Hedgerows Regulations 1997, SI 1997/1160, reg 2(3), Sch 1 Pt I. As to the Historic Buildings and Monuments Commission for England see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 803.

7 Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 3(a).

8 Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 3(b).

9 'Relevant date' means 24 March 1997 (ie the date on which the Hedgerows Regulations 1997, SI 1997/1160, were made): Sch 1 Pt I.

10 Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 4(a). 'Record Office' means: (1) a place appointed under the Public Records Act 1958 s 4 (place of deposit of public records: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 838); (2) a place at which documents are held pursuant to a transfer under the Law of Property Act 1922 s 144A(4) (see **LIBRARIES AND OTHER SCIENTIFIC AND CULTURAL INSTITUTIONS** vol 28 (Reissue) PARA 439) or under the Tithe Act 1936 s 36(2), including each of those provisions as applied by the Local Government (Records) Act 1962 s 7(1) (**LIBRARIES AND OTHER SCIENTIFIC AND CULTURAL INSTITUTIONS** vol 28 (Reissue) PARA 439); or (3) a place at which documents are made available for inspection by a local authority pursuant to the Local Government (Records) Act 1962 s 1 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 544): Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt I. As to the public record office see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 838.

11 Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 4(b).

12 Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 5(a). As to the Inclosure Acts generally see **COMMONS**.

13 'Building' includes structure: Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt I.

14 Ie within the meaning of the Town and Country Planning Act 1990 s 1 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28 et seq): see the Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 5(b).

15 Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 5(b).

16 Ie the species (1) listed in the Wildlife and Countryside Act 1981 Sch 1 Pt I (birds which are protected by special penalties), Sch 5 (animals which are protected) or Sch 8 (plants which are protected); (2) categorised as a declining breeder (category 3) in Batten LA, Bibby CJ, Clement P, Elliott GD and Porter RF (eds) *Red Data Birds in Britain* (1990) (ISBN 0 85661 056 9); or (3) categorised as 'endangered', 'extinct', 'rare' or 'vulnerable' in Britain in any of the following documents: (a) of the books known as the British Red Data Books: Perring FH and Farrell L *Vascular Plants* (1983, 2nd Edn) (ISBN 0 902484 04 4); Shirt DB (ed) *Insects* (1987) (ISBN 0 86139 380 5); and Bratton JH (ed) *Invertebrates other than insects* (1991) (ISBN 1 873701 00 4); and (b) of the books known as the Red Data Books of Britain and Ireland: Stewart NF and Church JM *Stoneworts* (1992) (ISBN 1 873701 24 1): Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 6(3), (4). References to the documents are reference to those documents as at the relevant date, without taking account of any subsequent revisions, supplements or modifications: Sch 1 Pt I.

17 Ie within the meaning of the Local Government Act 1972 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 23): see the Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 6(1).

18 The provisions of the Hedgerows Regulations 1997, SI 1997/1160, refer to English Nature, whose functions have been transferred to Natural England: see the Natural Environment and Rural Communities Act 2006 s 1(4). As to Natural England see PARA 523.

19 As to the Countryside Council for Wales and the Joint Nature Conservation Committee see PARAS 524-525.

20 Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 6(1) (amended by the Countryside and Rights of Way Act 2000 s 73(2)). However, where more than one record referable to the period of five or, as the case may be, ten years before the relevant date is held by a particular biological record centre, and the more (or most) recent record does not satisfy the criterion specified in head (6)(b) in the text, the criterion is not satisfied (notwithstanding that an earlier record satisfies it): Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 6(2).

21 Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 7(1)(a). 'Woody species' means the species and sub-species listed in Sch 3 and any hybrid (ie any individual plant resulting from a cross between parents of any species or sub-species so listed) but does not include any cultivar: Sch 1 Pt I.

22 Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 7(1)(b). The specified features are:

- 94 (1) a bank or wall which supports the hedgerow along at least one half of its length (Sch 1 Pt II para 7(4)(a));
- 95 (2) gaps which in aggregate do not exceed 10% of the length of the hedgerow (Sch 1 Pt II para 7(4)(b));
- 96 (3) where the length of the hedgerow does not exceed 50 metres, at least one standard tree (Sch 1 Pt II para 7(4)(c));
- 97 (4) where the length of the hedgerow exceeds 50 metres but does not exceed 100 metres, at least two standard trees (Sch 1 Pt II para 7(4)(d));
- 98 (5) where the length of the hedgerow exceeds 100 metres, such number of standard trees (within any part of its length) as would when averaged over its total length amount to at least one for each 50 metres (Sch 1 Pt II para 7(4)(e));
- 99 (6) at least three woodland species within one metre, in any direction, of the outermost edges of the hedgerow (Sch 1 Pt II para 7(4)(f));
- 100 (7) a ditch along at least one half of the length of the hedgerow (Sch 1 Pt II para 7(4)(g));
- 101 (8) connections scoring four points or more in accordance with the following scheme: a connection with another hedgerow scores one point and a connection with a pond or a woodland in which the majority of trees are broad-leaved trees scores two points; and a hedgerow is connected with something not only if it meets it but also if it has a point within 10 metres of it and would meet it if the line of the hedgerow continued (Sch 1 Pt II para 7(4)(h), (5));
- 102 (9) a parallel hedge within 15 metres of the hedgerow (Sch 1 Pt II para 7(4)(i)).

'Standard tree' (a) in the case of a multi-stemmed tree, means a tree which, when measured at a point 1.3 metres from natural ground level, has at least two stems whose diameters are at least 15 centimetres; (b) in the case of a single-stemmed tree, means a tree which, when measured at a point 1.3 metres from natural ground level, has a stem whose diameter is at least 20 centimetres: Sch 1 Pt I. 'Woodland species' means the species listed in Sch 2.

23 Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 7(1)(c).

24 Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 7(1)(d). The number of woody species in a hedgerow must be ascertained in accordance with the specified method: Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 7(1). The specified method is as follows:

- 103 (1) where the length of the hedgerow does not exceed 30 metres, count the number of woody species present in the hedgerow (Sch 1 Pt II para 7(3)(a));
- 104 (2) where the length of the hedgerow exceeds 30 metres, but does not exceed 100 metres, count the number of woody species present in the central stretch of 30 metres (Sch 1 Pt II para 7(3)(b));
- 105 (3) where the length of the hedgerow exceeds 100 metres, but does not exceed 200 metres, count the number of woody species present in the central stretch of 30 metres within each half of the hedgerow and divide the aggregate by two (Sch 1 Pt II para 7(3)(c));
- 106 (4) where the length of the hedgerow exceeds 200 metres, count the number of woody species present in the central stretch of 30 metres within each third of the hedgerow and divide the aggregate by three (Sch 1 Pt II para 7(3)(d)).

Where the hedgerow in question is situated wholly or partly in the county (as constituted on 1 April 1997) of the City of Kingston upon Hull, Cumbria, Darlington, Durham, East Riding of Yorkshire, Hartlepool, Lancashire, Middlesbrough, North East Lincolnshire, North Lincolnshire, Northumberland, North Yorkshire, Redcar and Cleveland, Stockton-on-Tees, Tyne and Wear, West Yorkshire or York, the number of woody species mentioned in heads (7)(a)-(d) in the text is to be treated as reduced by one: Sch 1 Pt II para 7(2).

25 le within the meaning of the Highways Act 1980 s 329(1) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 64): see the Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 8(a).

26 le within the meaning of the Countryside and Rights of Way Act 2000 Pt 2 (ss 47-72) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 603): see the Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 8(a) (amended by SI 2006/1177).

27 le within the meaning of the Wildlife and Countryside Act 1981 Pt III (ss 53-66) **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 591 et seq): see the Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 8(a).

28 le ascertained in accordance with note 24 heads (1)-(4).

29 Hedgerows Regulations 1997, SI 1997/1160, Sch 1 Pt II para 8(b). As to the specified features see note 22 heads (1)-(7).

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703. Removal of hedgerows.

Subject to certain exceptions¹ the removal² of a hedgerow³ is prohibited unless:

- 301 (1) the local planning authority⁴ in whose area the hedgerow is situated or, where it is situated in the area of more than one such authority, the local planning authority in whose area the greater part of the hedgerow is situated, has received from an owner⁵ of the hedgerow notice⁶ in the specified form⁷, or a form substantially to the same effect, of his proposal to remove the hedgerow (a 'hedgerow removal notice') together with the required plan and evidence⁸; and
- 302 (2) either (a) the authority has given to the person who gave the hedgerow removal notice written notice stating that the hedgerow may be removed; or (b) the specified period⁹ has expired without the authority having given to that person a hedgerow retention notice¹⁰ stating that the work may not be carried out¹¹; and
- 303 (3) the removal is carried out in accordance with the proposal specified in the hedgerow removal notice¹²; and
- 304 (4) the hedgerow is removed within the period of two years beginning with the date of service of the hedgerow removal notice¹³.

Anyone who intentionally or recklessly removes, or causes or permits another person to remove, a hedgerow in contravention of the above provisions is guilty of an offence¹⁴.

A local planning authority which has received a hedgerow removal notice must decide within the specified period¹⁵ whether or not to give notice to that person stating that the work, or, where the hedgerow removal notice refers to more than one hedgerow, so much of the work as may be specified by the authority in its notice, may not be carried out (a 'hedgerow retention notice')¹⁶. However, a local planning authority must not give a hedgerow retention notice in respect of a hedgerow which is not an important hedgerow¹⁷ and must give such a notice, within the specified period¹⁸, in respect of an important hedgerow unless satisfied, having regard in particular to the reasons given for its proposed removal in the hedgerow removal notice, that there are circumstances which justify the hedgerow's removal¹⁹.

Where a hedgerow in respect of which the local planning authority has received a hedgerow removal notice is situated in a parish in England for which there is a parish council, or in a community in Wales for which there is a community council, that authority must consult that council (or, where there is more than one such council, each of them) on the proposal to remove that hedgerow²⁰.

A hedgerow retention notice must²¹ specify each criterion²² which applies to the hedgerow to which the notice relates²³. A hedgerow retention notice may be withdrawn at any time by the local planning authority by giving written notice of the withdrawal to the person to whom the hedgerow retention notice was given²⁴.

Where a hedgerow retention notice has been given stating that work relating to the hedgerow may not be carried out, and that notice has not been withdrawn, removal of the hedgerow consisting of or including any such work is prohibited²⁵. Anyone who intentionally or recklessly removes, or causes or permits another person to remove, a hedgerow in contravention of this provision is guilty of an offence²⁶.

Each local planning authority must compile and keep available for public inspection free of charge at all reasonable hours at a convenient place a record containing a copy of every hedgerow removal notice received by it, every hedgerow retention notice issued by it and every notice issued under head (2)(a) above²⁷.

1 See the Hedgerows Regulations 1997, SI 1997/1160, reg 6; and PARA 704.

2 As to the meaning of 'remove' see PARA 700 note 6.

3 As to the meaning of 'hedgerow' see PARA 700 note 3. As to the hedgerows to which the Hedgerows Regulations 1997, SI 1997/1160, apply see PARA 701.

4 'Local planning authority' means: (1) as regards land within a national park, the national park authority for that park; (2) as regards land within the Broads, within the meaning of the Norfolk and Suffolk Broads Act 1988, the Broads Authority (see **WATER AND WATERWAYS** vol 101 (2009) PARA 734); (3) as regards the Isles of Scilly, the Council of the Isles of Scilly; (4) as regards any other land in England, the district planning authority within the meaning of the Town and Country Planning Act 1990 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28); (5) as regards any other land in Wales, the county council or county borough council: Hedgerows Regulations 1997, SI 1997/1160, reg 2(1). As to national parks see PARA 636 et seq. As to national park authorities see PARA 526. As to the Broads Authority see PARA 531.

5 'Owner' (1) in relation to a hedgerow growing on any land which comprises part of an agricultural holding or which is subject to a farm business tenancy, means the person who owns the freehold of the land or the tenant; (2) in relation to a hedgerow growing on any other land, means the person who owns the freehold of the land; and 'owns the freehold' means is entitled, otherwise than as a mortgagee not in possession, to dispose of the fee simple: Hedgerows Regulations 1997, SI 1997/1160, reg 2(1). 'Agricultural holding' has the same meaning as in the Agricultural Holdings Act 1986 (see **AGRICULTURAL LAND** vol 1 (2008) PARA 323): Hedgerows Regulations 1997, SI 1997/1160, reg 2(1). 'Farm business tenancy' has the same meaning as in the Agricultural Tenancies Act 1995 (see **AGRICULTURAL LAND** vol 1 (2008) PARA 302): Hedgerows Regulations 1997, SI 1997/1160, reg 2(1).

6 'Notice' means notice in writing: Hedgerows Regulations 1997, SI 1997/1160, reg 2(1).

7 In the form set out in Hedgerows Regulations 1997, SI 1997/1160, reg 5(1), Sch 4: see reg 5(1)(a).

8 Hedgerows Regulations 1997, SI 1997/1160, reg 5(1)(a). However, where a hedgerow is or is to be removed by or on behalf of a relevant utility operator from land of which it is not the owner head (1) in the text applies as though the reference to the owner were instead a reference to the relevant utility operator: reg 5(10). 'Relevant utility operator', in relation to any hedgerow, means: (1) any person who holds a licence granted under the Electricity Act 1989 s 6 (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1065) and who wishes to remove or, as the case may be, removes the hedgerow in question for the purpose of carrying out any activity authorised by that licence; (2) any person who holds a licence granted or treated as granted under the Gas Act 1986 s 7 (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 805) and who wishes to remove or, as the case may be, removes the hedgerow in question for the purpose of carrying out any activity authorised by that licence; (3) any person to whom the electronic communications code is applied by a direction under the Communications Act 2003 s 106 (see **TELECOMMUNICATIONS** vol 97 (2010) PARA 151) and who wishes to remove or, as the case may be, removes the hedgerow in question in pursuance of a right conferred by the electronic communications code; (4) a sewerage undertaker or a water undertaker who wishes to remove or, as the case may be, removes the hedgerow in question for the purpose of carrying out its functions, within the meaning of the Water Industry Act 1991 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 137 et seq): Hedgerows Regulations 1997, SI 1997/1160, reg 2(1) (definition amended by SI 2003/2155).

9 The specified period is 42 days beginning with the date on which the hedgerow removal notice is received by the local planning authority or such longer period as may be agreed between the person who gave the notice and the authority: Hedgerows Regulations 1997, SI 1997/1160, reg 5(6).

10 See the text and note 16.

11 Hedgerows Regulations 1997, SI 1997/1160, reg 5(1)(b).

12 Hedgerows Regulations 1997, SI 1997/1160, reg 5(1)(c).

13 Hedgerows Regulations 1997, SI 1997/1160, reg 5(1)(d).

14 Hedgerows Regulations 1997, SI 1997/1160, reg 7(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine:

reg 7(4). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. In determining the amount of any fine to be imposed, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the offender in consequence of the offence: reg 7(6). The Town and Country Planning Act 1990 s 331 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 55) applies in relation to an offence under the Hedgerows Regulations 1997, SI 1997/1160, reg 5(1) committed by a body corporate as it applies in relation to offences under the Town and Country Planning Act 1990 committed by a body corporate: Hedgerows Regulations 1997, SI 1997/1160, reg 7(7).

15 See note 9.

16 Hedgerows Regulations 1997, SI 1997/1160, reg 5(2).

17 Hedgerows Regulations 1997, SI 1997/1160, reg 5(5)(a). As to important hedgerows see PARA 702.

18 See note 9.

19 Hedgerows Regulations 1997, SI 1997/1160, reg 5(5)(b).

20 Hedgerows Regulations 1997, SI 1997/1160, reg 5(3). This consultation must be completed before the specified period (see note 9) expires and before the giving of a notice under head (2)(a) in the text or a hedgerow retention notice: reg 5(4).

21 Ie except where the Hedgerows Regulations 1997, SI 1997/1160, reg 8(4) applies: see PARA 705.

22 Ie each criterion of those listed in the Hedgerows Regulations 1997, SI 1997/1160, Sch 1 (see PARA 702): see reg 5(7).

23 Hedgerows Regulations 1997, SI 1997/1160, reg 5(7).

24 Hedgerows Regulations 1997, SI 1997/1160, reg 5(8).

25 Hedgerows Regulations 1997, SI 1997/1160, reg 5(9).

26 Hedgerows Regulations 1997, SI 1997/1160, reg 7(1). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine: reg 7(4). In determining the amount of any fine to be imposed, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the offender in consequence of the offence: reg 7(6). The Town and Country Planning Act 1990 s 331 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 55) applies in relation to an offence under the Hedgerows Regulations 1997, SI 1997/1160, reg 5(9) committed by a body corporate as it applies in relation to offences under the Town and Country Planning Act 1990 committed by a body corporate: Hedgerows Regulations 1997, SI 1997/1160, reg 7(7).

27 Hedgerows Regulations 1997, SI 1997/1160, reg 10(a), (b), (c). As to the requirement to keep available for inspection a copy of every determination notified to the local planning authority under reg 9(3) see reg 10(d); and PARA 706 note 10.

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704. Permitted work.

The removal of any hedgerow¹ is permitted if it is required for any of the following purposes:

- 305 (1) making a new opening in substitution for an existing opening which gives access to land²;
- 306 (2) obtaining temporary access to any land in order to give assistance in an emergency³;
- 307 (3) obtaining access to land where another means of access is not available or is available only at disproportionate cost⁴;
- 308 (4) national defence⁵;
- 309 (5) carrying out development for which planning permission has been granted or is deemed to have been granted (with certain exceptions)⁶;
- 310 (6) carrying out, pursuant to, or under, the Land Drainage Act 1991, the Water Resources Act 1991 or the Environment Act 1995, work for the purpose of flood defence or land drainage⁷;
- 311 (7) preventing the spread of, or ensuring the eradication of any plant pest⁸ or any tree pest⁹;
- 312 (8) the carrying out by the Secretary of State or the Welsh Ministers¹⁰ of functions in respect of any highway for which he is or they are the highway authority or in relation to which¹¹ he has or they have the same powers under the Highways Act 1980 as the local highway authority¹²;
- 313 (9) carrying out any felling, lopping or cutting back required or permitted¹³ to prevent obstruction of or interference with electric lines and plant or to prevent danger¹⁴; or
- 314 (10) the proper management of the hedgerow¹⁵.

The fact that work is permitted under these provisions does not affect any prohibition or restriction imposed by or under any other enactment or by any agreement¹⁶.

1 As to the meaning of 'hedgerow' see PARA 700 note 3. As to the hedgerows to which the Hedgerows Regulations 1997, SI 1997/1160, apply see PARA 701. As to the meaning of 'remove' see PARA 700 note 6. As to the removal of hedgerows see PARA 703.

2 Hedgerows Regulations 1997, SI 1997/1160, reg 6(1)(a). However, where the removal of a hedgerow is permitted by head (1) in the text, the person removing it must fill the existing opening by planting a hedge within eight months of the making of the new opening: reg 6(2). A person who contravenes or fails to comply with this requirement is guilty of an offence: reg 7(2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: reg 7(5). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. In determining the amount of any fine to be imposed, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to the offender in consequence of the offence: reg 7(6). The Town and Country Planning Act 1990 s 331 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 55) applies in relation to an offence under the Hedgerows Regulations 1997, SI 1997/1160, reg 6(2) committed by a body corporate as it applies in relation to offences under the Town and Country Planning Act 1990 committed by a body corporate: Hedgerows Regulations 1997, SI 1997/1160, reg 7(7).

3 Hedgerows Regulations 1997, SI 1997/1160, reg 6(1)(b).

4 Hedgerows Regulations 1997, SI 1997/1160, reg 6(1)(c).

5 Hedgerows Regulations 1997, SI 1997/1160, reg 6(1)(d).

6 Hedgerows Regulations 1997, SI 1997/1160, reg 6(1)(e). The exceptions are: development for which permission is granted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3 in respect of development of any of the descriptions contained in Sch 2 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 265) other than Pt 11 (development under local or private Acts or orders) and Pt 30 (toll road facilities): see the Hedgerows Regulations 1997, SI 1997/1160, reg 6(1)(e).

7 Hedgerows Regulations 1997, SI 1997/1160, reg 6(1)(f). See **WATER AND WATERWAYS** vol 101 (2009) PARA 556.

8 le any plant pest within the meaning, in relation to England, of the Plant Health (England) Order 2005, SI 2005/2530, in respect of which any action is being, or is to be, taken under art 32 or art 33; or any plant pest within the meaning, in relation to Wales, of the Plant Health (Wales) Order 2006, SI 2006/1643, in respect of which any action is being, or is to be, taken under art 32 or art 33: see the Hedgerows Regulations 1997, SI 1997/1160, reg 6(1)(g)(i). Regulation 6(1)(g)(i) mentions the Plant Health (Great Britain) Order 1993, SI 1993/1320, now replaced in relation to England by the Plant Health (England) Order 2005, SI 2005/2530, and in relation to Wales by the Plant Health (Wales) Order 2006, SI 2006/1643.

9 See the Hedgerows Regulations 1997, SI 1997/1160, reg 6(1)(g). The text refers to any tree pest meaning within the Plant Health (Forestry) Order 2005, SI 2005/2517, in respect of which any action is being, or is to be, taken under art 31 or art 32: see the Hedgerows Regulations 1997, SI 1997/1160, art 6(1)(g)(ii). Regulation 6(1)(g)(i) mentions the Plant Health (Forestry) (Great Britain) Order 1993, SI 1993/1283, now replaced by the Plant Health (Forestry) Order 2005, SI 2005/2517.

10 As to the Secretary of State and the Welsh Ministers see PARA 519.

11 le by virtue of the Highways Act 1980 s 4(2) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 722): see the Hedgerows Regulations 1997, SI 1997/1160, reg 6(1)(h).

12 Hedgerows Regulations 1997, SI 1997/1160, reg 6(1)(h).

13 le as a consequence of any notice given or order made under the Electricity Act 1989 Sch 4 para 9 (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1295): see the Hedgerows Regulations 1997, SI 1997/1160, reg 6(1)(i).

14 Hedgerows Regulations 1997, SI 1997/1160, reg 6(1)(i).

15 Hedgerows Regulations 1997, SI 1997/1160, reg 6(1)(j). See *Conwy County Borough Council v Lloyd* [2003] EWHC 264 (Admin), [2003] All ER (D) 11 (Feb), [2003] Env LR 638.

16 Hedgerows Regulations 1997, SI 1997/1160, reg 6(3).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(6) HEDGEROWS/705. Replacement of hedgerows.

705. Replacement of hedgerows.

Except where the local planning authority¹ is the owner² of the hedgerow³, where it appears to the local planning authority that a hedgerow has been removed⁴, the authority may (whether or not proceedings are instituted⁵) give a notice to the owner⁶ requiring him to plant another hedgerow or, where the hedgerow has been removed by or on behalf of a relevant utility operator⁷, give a notice to that operator requiring it to plant another hedgerow⁸. Such a notice must specify the species and position of the shrubs, or trees and shrubs, to be planted and the period within which the planting is to be carried out⁹.

A hedgerow planted in compliance with a notice¹⁰ must be treated for the purposes of the Hedgerows Regulations and for the period of 30 years beginning with the date of substantial completion of the planting, as if it were an important hedgerow¹¹.

1 As to the meaning of 'local planning authority' see PARA 703 note 4.

2 As to the meaning of 'owner' see PARA 703 note 5.

3 See the Hedgerows Regulations 1997, SI 1997/1160, reg 15; and PARA 709. As to the meaning of 'hedgerow' see PARA 700 note 3. As to the hedgerows to which the Hedgerows Regulations 1997, SI 1997/1160, apply see PARA 701.

4 If in contravention of the Hedgerows Regulations 1997, SI 1997/1160, reg 5(1) or (9) (see PARA 703): see reg 8(1). As to the meaning of 'remove' see PARA 700 note 6.

5 If under the Hedgerows Regulations 1997, SI 1997/1160, reg 7 (see PARA 703): see reg 8(1).

6 The Town and Country Planning Act 1990 s 318(1), (3), (6) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 17) applies to notices required to be served under the Hedgerows Regulations 1997, SI 1997/1160, on an owner of land as if those notices were notices required to be served on an owner of land under a provision of the Town and Country Planning Act 1990: see the Hedgerows Regulations 1997, SI 1997/1160, reg 16(1)(a), (2).

7 As to the meaning of 'relevant utility undertaker' see PARA 703 note 8.

8 Hedgerows Regulations 1997, SI 1997/1160, reg 8(1). The Town and Country Planning Act 1990 s 209(1), (2), (6) (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 875) applies, with the necessary modifications, to shrubs and trees whose planting is required by such notice as if they were trees whose planting was required by a notice under s 207(1) (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 874): Hedgerows Regulations 1997, SI 1997/1160, reg 8(3).

9 Hedgerows Regulations 1997, SI 1997/1160, reg 8(2).

10 If a notice under the Hedgerows Regulations 1997, SI 1997/1160, reg 8(1) or (3): see reg 8(4).

11 Hedgerows Regulations 1997, SI 1997/1160, reg 8(4). As to important hedgerows see PARA 702.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(6) HEDGEROWS/706. Appeals.

706. Appeals.

Except where the local planning authority¹ is the owner² of the hedgerow³, a person to whom a hedgerow retention notice⁴ or a notice requiring the planting of a hedgerow⁵ is given may, by notice given within 28 days from the date on which the notice was given to him, or such longer period as the Secretary of State or the Welsh Ministers⁶ may allow, appeal to the Secretary of State or the Welsh Ministers⁷. The notice of appeal must state the grounds for the appeal and the appellant must serve a copy of it on the local planning authority which gave the hedgerow retention notice or the notice requiring the planting of a hedgerow⁸.

Before determining the appeal, the Secretary of State or the Welsh Ministers must afford to the appellant and the local planning authority an opportunity, if they so wish, of appearing before, and being heard by, a person appointed for the purpose⁹. In determining the appeal the Secretary of State or the Welsh Ministers may allow or dismiss it, either as to the whole or as to part; and must give any directions necessary to give effect to the determination, including directions for quashing or modifying any notice, and must notify the appellant and the local planning authority of the determination of the appeal¹⁰. The Secretary of State or the Welsh Ministers may cause a local inquiry to be held in connection with an appeal¹¹, and may appoint a person to exercise functions in connection with appeals¹². The Secretary of State or the Welsh Ministers and any appointed person, except where the appeal is disposed of on the basis of written representations and other documents, has or have the same power to make orders¹³ in relation to proceedings on an appeal which do not give rise to an inquiry as the Secretary of State has or the Welsh Ministers have in relation to an inquiry¹⁴.

1 As to the meaning of 'local planning authority' see PARA 703 note 4.

2 As to the meaning of 'owner' see PARA 703 note 5.

3 See the Hedgerows Regulations 1997, SI 1997/1160, reg 15; and PARA 709. As to the meaning of 'hedgerow' see PARA 700 note 3. As to the hedgerows to which the Hedgerows Regulations 1997, SI 1997/1160, apply see PARA 701.

4 As to hedgerow retention notices see PARA 703.

5 I.e. a notice under the Hedgerows Regulations 1997, SI 1997/1160, reg 8(1) (see PARA 705): see reg 9(1).

6 As to the Secretary of State and the Welsh Ministers see PARA 519.

7 Hedgerows Regulations 1997, SI 1997/1160, reg 9(1).

8 Hedgerows Regulations 1997, SI 1997/1160, reg 9(2).

9 Hedgerows Regulations 1997, SI 1997/1160, reg 9(4).

10 Hedgerows Regulations 1997, SI 1997/1160, reg 9(3). Each local planning authority must compile and keep available for public inspection free of charge at all reasonable hours at a convenient place a record containing a copy of every determination notified to it under reg 9(3): reg 10(d).

11 Hedgerows Regulations 1997, SI 1997/1160, reg 9(5). The provisions of the Local Government Act 1972 s 250(2)-(4), s 250(5) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 105) apply to any such inquiry: Hedgerows Regulations 1997, SI 1997/1160, reg 9(5).

12 See the Hedgerows Regulations 1997, SI 1997/1160, reg 9(6). The Secretary of State has or the Welsh Ministers have the same powers to appoint a person to exercise functions under reg 9 as given under the Environment Act 1995 s 114 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 65) in relation

to functions specified in s 114; and the provisions of Sch 20 (delegation of functions: see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 65) apply with respect to any such appointment as they apply to appointments under s 114: Hedgerows Regulations 1997, SI 1997/1160, reg 9(6).

13 See under the Local Government Act 1972 s 250(5) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 105): see the Hedgerows Regulations 1997, SI 1997/1160, reg 9(7).

14 See the Hedgerows Regulations 1997, SI 1997/1160, reg 9(7). The Town and Country Planning Act 1990 s 322A(a) (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 874) applies to proceedings on an appeal under the Hedgerows Regulations 1997, SI 1997/1160, reg 9 as if they were proceedings under the Town and Country Planning Act 1990: Hedgerows Regulations 1997, SI 1997/1160, reg 9(7).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(6) HEDGEROWS/707. Injunctions.

707. Injunctions.

Where a local planning authority¹ considers it necessary or expedient for an actual or apprehended offence² under the Hedgerows Regulations³ to be restrained by injunction, it may apply to the court⁴ for an injunction, whether or not it has exercised or is proposing to exercise any of its other powers under the regulations⁵. On an application for an injunction the court may grant such an injunction as it thinks appropriate for the purpose of restraining the offence⁶.

1 As to the meaning of 'local planning authority' see PARA 703 note 4.

2 As to offences under the Hedgerows Regulations 1997, SI 1997/1160, see reg 7; and PARAS 703-704.

3 Ie the Hedgerow Regulations 1997, SI 1997/1160.

4 'Court' means the High Court or the county court: Hedgerows Regulations 1997, SI 1997/1160, reg 11(3).

5 Hedgerows Regulations 1997, SI 1997/1160, reg 11(1).

6 Hedgerows Regulations 1997, SI 1997/1160, reg 11(2). As to injunctions generally see **CIVIL PROCEDURE** vol 11 (2009) PARA 331 et seq.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(6) HEDGEROWS/708. Rights of entry.

708. Rights of entry.

Provision is made for rights of entry either with or without a warrant as follows¹:

- 315 (1) any person duly authorised in writing by a local planning authority² may enter any land for the purpose of:
 - 13 16. (a) surveying it in connection with any hedgerow removal notice³ received by the authority⁴;
 - 17. (b) ascertaining whether an offence⁵ has been committed⁶; and
 - 18. (c) determining whether a notice requiring the planting of a hedgerow⁷ should be given⁸,
 - 14 316 if there are reasonable grounds for entering for the purpose in question⁹;
 - 317 (2) any person duly authorised in writing by the Secretary of State or the Welsh Ministers¹⁰ may enter any land for the purpose of surveying it in connection with an appeal¹¹, if there are reasonable grounds for entering for that purpose¹².

Any right to enter by virtue of head (1) or head (2) above must be exercised at a reasonable hour¹³. No right to enter land under head (1)(a) or head (2) above may be exercised in relation to land which:

- 318 (i) adjoins that in respect of which a hedgerow removal notice has been given or an appeal made¹⁴; and
- 319 (ii) is occupied by a person other than the person who gave the hedgerow removal notice or made the appeal¹⁵,

unless at least 24 hours' notice of the intended entry has been given to the occupier of that adjoining land¹⁶. Where the hedgerow is or is to be removed by or on behalf of a relevant utility undertaker from land of which it is not the owner¹⁷, no right to enter any land by virtue of head (1) or head (2) above may be exercised unless at least 24 hours' notice of the intended entry has been given to the occupier of the land¹⁸.

If it is shown to the satisfaction of a justice of the peace on sworn information in writing:

- 320 (A) that there are reasonable grounds for entering any land for any of the purposes in head (1) or head (2) above¹⁹; and
- 321 (B) that admission to the land has been refused, or a refusal is reasonably apprehended²⁰ or the case is one of urgency²¹,

the justice may issue a warrant authorising any person duly authorised in writing by a local planning authority or, as the case may be, the Secretary of State or the Welsh Ministers to enter the land²². A warrant authorises entry on one occasion only and that entry must be within one month from the date of the issue of the warrant²³ and at a reasonable hour, unless the case is one of urgency²⁴.

A right of entry²⁵ is to be construed as including power to take samples from any hedgerow on the land and samples of the soil²⁶. A person authorised to enter land in the exercise of a right of entry must, if so required, produce evidence of his authority and state the purpose of his entry before entering²⁷. He may take with him such other persons as may be necessary²⁸; and on leaving the land must, if the occupier is not then present, leave it as effectively secured against trespassers as he found it²⁹.

Any person who wilfully obstructs a person acting in the exercise of a right of entry is guilty of an offence³⁰.

If any damage is caused to land or chattels in the exercise of a right of entry, compensation³¹ may be recovered by any person suffering the damage from the authority who gave the written authority for the entry or, as the case may be, the Secretary of State or the Welsh Ministers³².

- 1 As to rights to enter without warrant see the Hedgerows Regulations 1997, SI 1997/1160, reg 12; and the text and notes 2-18. As to the right to enter under warrant see reg 13; and the text and notes 19-24.
- 2 As to the meaning of 'local planning authority' see PARA 703 note 4.
- 3 As to hedgerow removal notices see PARA 703.
- 4 Hedgerows Regulations 1997, SI 1997/1160, reg 12(1)(a).
- 5 It is an offence under the Hedgerows Regulations 1997, SI 1997/1160, reg 7 (see PARAS 703-704): see reg 12(1).
- 6 Hedgerows Regulations 1997, SI 1997/1160, reg 12(1)(b).
- 7 It is under the Hedgerows Regulations 1997, SI 1997/1160, reg 8 (see PARA 705): see reg 12(1). As to the meaning of 'hedgerow' see PARA 700 note 3. As to the hedgerows to which the Hedgerows Regulations 1997, SI 1997/1160, apply see PARA 701.
- 8 Hedgerows Regulations 1997, SI 1997/1160, reg 12(1)(c).
- 9 Hedgerows Regulations 1997, SI 1997/1160, reg 12(1).
- 10 As to the Secretary of State and the Welsh Ministers see PARA 519.
- 11 It is an appeal made under the Hedgerows Regulations 1997, SI 1997/1160, reg 9 (see PARA 706): see reg 12(2).
- 12 Hedgerows Regulations 1997, SI 1997/1160, reg 12(2).
- 13 Hedgerows Regulations 1997, SI 1997/1160, reg 12(3).
- 14 Hedgerows Regulations 1997, SI 1997/1160, reg 12(4)(a).
- 15 Hedgerows Regulations 1997, SI 1997/1160, reg 12(4)(b).
- 16 Hedgerows Regulations 1997, SI 1997/1160, reg 12(4).
- 17 It is where the Hedgerows Regulations 1997, SI 1997/1160, reg 5(10) (see PARA 703) applies: see reg 12(5). As to the meaning of 'relevant utility undertaker' see PARA 703 note 8. As to the meaning of 'owner' see PARA 703 note 5.
- 18 Hedgerows Regulations 1997, SI 1997/1160, reg 12(5).
- 19 Hedgerows Regulations 1997, SI 1997/1160, reg 13(1)(a).
- 20 For this purpose, admission to land is to be regarded as having been refused if no reply is received to a request for admission within a reasonable period: Hedgerows Regulations 1997, SI 1997/1160, reg 13(2).
- 21 Hedgerows Regulations 1997, SI 1997/1160, reg 13(1)(b).
- 22 Hedgerows Regulations 1997, SI 1997/1160, reg 13(1).

23 Hedgerows Regulations 1997, SI 1997/1160, reg 13(3)(a).

24 Hedgerows Regulations 1997, SI 1997/1160, reg 13(3)(b).

25 Is any power conferred by the Hedgerows Regulations 1997, SI 1997/1160, regs 12, 13: see reg 14(1).

26 Hedgerows Regulations 1997, SI 1997/1160, reg 14(1).

27 Hedgerows Regulations 1997, SI 1997/1160, reg 14(2)(a).

28 Hedgerows Regulations 1997, SI 1997/1160, reg 14(2)(b).

29 Hedgerows Regulations 1997, SI 1997/1160, reg 14(2)(c).

30 Hedgerows Regulations 1997, SI 1997/1160, reg 14(3). A person found guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: reg 14(3). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

31 Any question of disputed compensation under the Hedgerows Regulations 1997, SI 1997/1160, reg 14 must be referred to and determined by the Upper Tribunal (reg 14(5) (reg 14 amended by SI 2009/1307)) and in relation to the determination of any such question, the Land Compensation Act 1961 ss 2, 4 apply subject to any necessary modifications (Hedgerows Regulations 1997, SI 1997/1160, reg 14(6) (as so amended)). As to the establishment of, and procedure before, the Upper Tribunal see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 720; and **ADMINISTRATIVE LAW**.

The Town and Country Planning Act 1990 s 318(1), (3), (6) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 17) applies to compensation payable under the Hedgerows Regulations 1997, SI 1997/1160, reg 14 as if that compensation were compensation payable under the Town and Country Planning Act 1990 Pt IV (ss 107-118): Hedgerows Regulations 1997, SI 1997/1160, reg 16(1)(b).

32 Hedgerows Regulations 1997, SI 1997/1160, reg 14(4).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(6) HEDGEROWS/709. Local planning authorities as owners of hedgerows.

709. Local planning authorities as owners of hedgerows.

Where a local planning authority¹ is the owner² (whether alone or jointly with others) of a hedgerow³, the following provisions apply⁴. Notwithstanding provisions relating to the arrangements for the discharge of functions by local authorities⁵, a hedgerow removal notice⁶ may not be considered (1) by a committee or sub-committee of the authority concerned if that committee or sub-committee is responsible (wholly or partly) for the management of the land in which is situated the hedgerow to which the notice relates⁷; or (2) by an officer of the authority concerned if his responsibilities include any aspect of the management of the land in which is situated the hedgerow to which the notice relates⁸.

1 As to the meaning of 'local planning authority' see PARA 703 note 4.

2 As to the meaning of 'owner' see PARA 703 note 5.

3 As to the meaning of 'hedgerow' see PARA 700 note 3. As to the hedgerows to which the Hedgerows Regulations 1997, SI 1997/1160, apply see PARA 701.

4 Hedgerows Regulations 1997, SI 1997/1160, reg 15(1). Regulations 8, 9 (see PARAS 705-706) do not apply in a case to which reg 15 applies: reg 15(3).

5 Ie anything in the Local Government Act 1972 s 101 (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 370): see the Hedgerows Regulations 1997, SI 1997/1160, reg 15(2).

6 As to hedgerow removal notices see PARA 703.

7 Hedgerows Regulations 1997, SI 1997/1160, reg 15(2)(a).

8 Hedgerows Regulations 1997, SI 1997/1160, reg 15(2)(b).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(6) HEDGEROWS/710. Hedges under the Inclosure Acts.

710. Hedges under the Inclosure Acts.

Many inclosure awards required the planting and maintenance of fences or hedges along the boundaries of allotments¹ and such provisions may still be enforceable as between private landowners². They would not normally create public rights enforceable by other persons³ and may take effect as if they were positive covenants and therefore the burden may not be enforceable against successors to the person initially liable⁴.

1 See the Inclosure Act 1845 s 74 (amended by the Statute Law Revision Act 1891); and the Inclosure Act 1845 s 83 (amended by the Statute Law Revision Act 1891; and the Statute Law (Repeals) Act 1998). See also the Inclosure Act 1845 s 15; and PARA 537. But as to the power to dispense with fences see the Inclosure Act 1857 s 1.

2 *Garnett v Pratt* [1926] Ch 897, [1926] All ER Rep 333; *Seymour v Flamborough Parish Council* (2 January 1997, unreported); *Smith v Muller* [2008] EWCA Civ 1425, [2008] All ER (D) 188 (Dec).

3 *Meddick v Shiplake Parish Council* (December 1999, unreported); *R v Solihull Borough Council, ex p Berkswell Parish Council* (1999) 77 P & CR 312.

4 *Marlton v Turner* [1998] 3 EGLR 185.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(7) WILD PLANTS/(i) Protection of Wild Plants Generally/711. Introduction.

(7) WILD PLANTS

(i) Protection of Wild Plants Generally

711. Introduction.

Wild plants are protected by both United Kingdom and European legislation. The Wildlife and Countryside Act 1981 restricts the unlicensed sale or disturbance of protected plants¹, and provision is made by the Conservation (Natural Habitats etc) Regulations 1994 for the protection of European protected species². There is also international, European and domestic legislation for the protection of endangered species³.

1 See the Wildlife and Countryside Act 1981 ss 13, 16, Sch 8; and PARAS 712-713. As to enforcement see PARAS 714-715.

2 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716; and PARA 741.

3 See PARA 716 et seq.

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712. Restrictions on the sale and disturbance of wild plants.

Any person who, not being licensed for the purpose¹, sells², offers or exposes for sale, or has in his possession or transports for the purpose of sale, any live or dead wild plant³ included in the schedule of protected plants⁴, or any part of, or anything derived from, such a plant, or publishes or causes to be published any advertisement⁵ likely to be understood as conveying that he buys or sells, or intends to buy or sell, any of those things, is guilty of an offence⁶; and any person who, not being licensed for the purpose, intentionally picks⁷, uproots⁸ or destroys any wild plant included in the schedule of protected plants, or who, not being an authorised person⁹, intentionally uproots any wild plant not included in that schedule, is guilty of an offence¹⁰ unless he can show that the act was an incidental result of a lawful operation and could not reasonably have been avoided¹¹.

1 As to licensing see the Wildlife and Countryside Act 1981 s 16; and PARA 713.

2 'Sale' includes hire, barter and exchange; and cognate expressions are to be construed accordingly: Wildlife and Countryside Act 1981 s 27(1).

3 'Wild plant' means any plant which is, or, before it was picked, uprooted or destroyed, was, growing wild and is of a kind which ordinarily grows in Great Britain in a wild state: Wildlife and Countryside Act 1981 s 27(1). As to the meaning of 'Great Britain' see PARA 525 note 14. In any proceedings for an offence under s 13(2)(a), the plant in question is presumed to have been a wild plant unless the contrary is shown: s 13(4).

4 For the schedule of protected plants see the Wildlife and Countryside Act 1981 Sch 8 (amended by SI 1988/288; SI 1992/2350; SI 1998/878; SI 2007/1843). The provisions of the Wildlife and Countryside Act 1981 s 22(3)(a), (b), (4)(b) empower the Secretary of State or the Welsh Ministers, on a representation made to him or them by certain conservation bodies acting through the Joint Nature Conservation Committee (see PARA 525) in accordance with the Natural Environment and Rural Communities Act 2006 Pt 2 (ss 31-39) (see PARA 525), by order, either generally or with respect to particular provisions of the Wildlife and Countryside Act 1981 Pt I (ss 1-27), or particular areas of Great Britain or particular times of year, to add to Sch 8 any plant which, in the opinion of the Secretary of State or the Welsh Ministers, is in danger of extinction in Great Britain or is likely to become so endangered unless conservation measures are taken, and to remove from Sch 8 any plant which, in his or their opinion, is no longer so endangered or likely to become so endangered, and to add any plants to, or remove any plants from Sch 8 for the purpose of complying with an international obligation. As to the Secretary of State and the Welsh Ministers see PARA 519.

5 'Advertisement' includes a catalogue, a circular and a price list: Wildlife and Countryside Act 1981 s 27(1).

6 Wildlife and Countryside Act 1981 s 13(2). The penalty on summary conviction of an offence under s 13 is imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both: s 21(1) (substituted by the Countryside and Rights of Way Act 2000 Sch 12 para 10(1), (2), (6)). For further provisions as to offences, the powers of inspectors and constables, and the bringing of proceedings under the Wildlife and Countryside Act 1981 Pt I, see **ANIMALS** vol 2 (2008) PARA 1015 et seq. As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

As to the protection of endangered species see PARA 716 et seq. As to the protection of European protected species of plants see PARA 741.

7 'Pick' means gather or pluck any part of the plant without uprooting it: Wildlife and Countryside Act 1981 s 27(1).

8 'Uproot' means dig up or otherwise remove the plant from the land on which it is growing: Wildlife and Countryside Act 1981 s 27(1).

9 'Authorised person' means the owner or occupier, or any person authorised by the owner or occupier, of the land on which the action authorised is taken, or any person authorised in writing by the local authority for

the area within which the action authorised is taken, or any person authorised by the Environment Agency, a water undertaker or a sewerage undertaker: see the Wildlife and Countryside Act 1981 s 27(1) (amended by the Water Act 1989 Sch 25 para 66(1); and SI 1996/593). The authorisation of any person for this purpose does not confer the right of entry upon any land: Wildlife and Countryside Act 1981 s 27(1). As to the Environment Agency see PARA 528; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq; as to sewerage undertakers see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 999 et seq; and as to water undertakers see **WATER AND WATERWAYS** vol 100 (2009) PARA 134 et seq. 'Occupier', in relation to any land other than the foreshore, includes any person having any right of hunting, shooting, fishing or taking game or fish: s 27(1). 'Local authority', for the purposes of the Wildlife and Countryside Act 1981 Pt I, means a county, district or London borough council or, in relation to Wales, a county council or county borough council: s 27(1) (amended by the Local Government Act 1985 Sch 17; and the Local Government (Wales) Act 1994 Sch 16 para 65(2), Sch 18). As to the counties and districts in England and their councils see **LOCAL GOVERNMENT** vol 69 (2009) PARA 24 et seq. As to the London boroughs and their councils see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARAS 5, 29-30, 35 et seq. As to local authorities in Wales see **LOCAL GOVERNMENT** vol 69 (2009) PARA 37 et seq.

10 Wildlife and Countryside Act 1981 s 13(1). As to penalties see note 6.

11 Wildlife and Countryside Act 1981 s 13(3).

UPDATE

712 Restrictions on the sale and disturbance of wild plants

TEXT AND NOTES--As to the power of marine enforcement officers to enforce nature conservation legislation see Marine and Coastal Access Act 2009 s 237(1), (2); and **WATER AND WATERWAYS** vol 100 (2009) PARA 30F.3.

NOTE 9--Definition of 'authorised person' in Wildlife and Countryside Act 1981 s 27(1) further amended: Marine and Coastal Access Act 2009 s 193(4), Sch 14 para 11(a) (Sch 14 para 11(a) not yet in force).

Definition of 'authorised person' in Wildlife and Countryside Act 1981 s 27(1) repealed in part: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

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713. Licences.

The provisions restricting the picking, uprooting and destruction of wild plants¹ do not apply to anything done under and in accordance with the terms of a licence² granted by the relevant conservation body³ for:

- 322 (1) scientific or educational purposes⁴;
- 323 (2) the purpose of ringing or marking, or examining any ring or mark on, wild animals⁵;
- 324 (3) the purpose of conserving wild animals or wild plants or introducing them to particular areas⁶;
- 325 (4) the purpose of protecting any zoological or botanical collection⁷; or
- 326 (5) the purpose of photography⁸,

nor do those provisions apply to anything done under and in accordance with the terms of a licence granted by the Secretary of State or the Welsh Ministers⁹ for the purpose of:

- 327 (a) preserving public health or public safety¹⁰;
- 328 (b) preventing the spread of disease¹¹; or
- 329 (c) preventing serious damage to livestock¹², foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property, or to fisheries¹³.

The provisions restricting the sale, offer and advertisement for sale of wild plants¹⁴ do not apply to anything done under and in accordance with the terms of a licence granted by the Secretary of State or the Welsh Ministers¹⁵.

1 As to the meaning of 'wild plant' see PARA 712 note 3. 'Plant' includes fungi and algae: Wildlife and Countryside Act 1981 s 71(2) (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 97(1), (3), (4)). As to the provisions restricting the picking, uprooting and destruction of wild plants see the Wildlife and Countryside Act 1981 s 13(1); and PARA 712.

2 For further provision as to the terms of licences, and as to the offence of making false statements in relation to the grant of a licence, see the Wildlife and Countryside Act 1981 ss 16(5)-(8), 17; and **ANIMALS** vol 2 (2008) PARAS 1006, 1119.

3 The Wildlife and Countryside Act 1981 s 16(3) refers to the 'appropriate authority' which for these purposes means the relevant conservation body: see the Wildlife and Countryside Act 1981 s 16(9)(c) (amended by the Environmental Protection Act 1990 Sch 9 para 11(1), (4)(a); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 72(1), (3)). For these purposes a reference to a 'relevant conservation body' is a reference to the conservation body for the area in which it is proposed to carry on the activity requiring a licence: Wildlife and Countryside Act 1981 s 16(11) (added by the Environmental Protection Act 1990 Sch 9 para 11(4)(d); and amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 72(3)). The relevant conservation bodies for these purposes are Natural England and the Countryside Council for Wales: see the Wildlife and Countryside Act 1981 s 27(3A) (substituted by the Natural Environment and Rural Communities Act 2006 Sch 11 para 76(1), (4)). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

As from a day to be appointed, the definition of 'appropriate authority' is amended so that, so far as relating to the restricted English inshore region, the 'appropriate authority' is the Marine Management Organisation: see the Wildlife and Countryside Act 1981 s 16(8A), (9) (s 16(8A) prospectively added, and s 16(9) prospectively amended, by the Marine and Coastal Access Act 2009 s 10). 'The restricted English inshore region' means so much of the English inshore region as lies to seaward of mean low water mark; and 'the English inshore region'

means the area of sea within the seaward limits of the territorial sea adjacent to England: see the Wildlife and Countryside Act 1981 s 16(12) (prospectively added by the Marine and Coastal Access Act 2009 s 10); and the Marine and Coastal Access Act 2009 s 322. To the extent that an application for a licence under the Wildlife and Countryside Act 1981 s 16 which was made, but not determined or withdrawn, before the coming into force of the Marine and Coastal Access Act 2009 s 10 relates to the restricted English inshore region, the application is to be treated as an application made to the Marine Management Organisation after the coming into force of s 10: see s 10(5) (not yet in force). At the date at which this volume states the law, no such day had been appointed.

4 Wildlife and Countryside Act 1981 s 16(3)(a).

5 Wildlife and Countryside Act 1981 s 16(3)(b). 'Wild animal' means any animal (other than a bird) which is or (before it was killed or taken) was living wild: s 27(1).

6 Wildlife and Countryside Act 1981 s 16(3)(c).

7 Wildlife and Countryside Act 1981 s 16(3)(d).

8 Wildlife and Countryside Act 1981 s 16(3)(e).

9 Ie the 'appropriate authority': see the Wildlife and Countryside Act 1981 s 16(9)(d). As to the Secretary of State and the Welsh Ministers see PARA 519. The Secretary of State or the Welsh Ministers must from time to time consult with each of the conservation bodies as to the exercise of their functions under these provisions, and must not grant a licence of any description unless advised by the relevant conservation body as to the circumstances in which, in the body's opinion, licences of that description should be granted: s 16(10) (amended by the Environmental Protection Act 1990 Sch 9 para 11(1), (4)(b), (c); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 72(3)).

10 Wildlife and Countryside Act 1981 s 16(3)(f).

11 Wildlife and Countryside Act 1981 s 16(3)(g).

12 'Livestock' includes any animal which is kept for the provision of food, wool, skins or fur; or for the purpose of its use in the carrying on of any agricultural activity; or for the provision or improvement of shooting or fishing: Wildlife and Countryside Act 1981 s 27(1).

13 Wildlife and Countryside Act 1981 s 16(3)(h).

14 Ie the Wildlife and Countryside Act 1981 s 13(2) (see PARA 712).

15 Wildlife and Countryside Act 1981 s 16(4)(b), (9)(b). Before granting a licence the Secretary of State or the Welsh Ministers must consult with whichever of the advisory bodies (as to which see s 23; and **ANIMALS** vol 2 (2008) PARA 1014) he considers or they consider best able to advise him or them as to whether the licence should be granted, or the relevant conservation body: s 16(9)(a), (b) (s 16(9)(a) amended by the Environmental Protection Act 1990 Sch 9 para 11(1), (4)(a); and the Natural Environment and Rural Communities Act 2006 Sch 11 para 72(3)).

UPDATE

713 Licences

NOTE 3--Appointed day is 1 April 2010: SI 2010/298.

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714. Enforcement powers and duties of wildlife inspectors, constables and local authorities.

Provision is made for the enforcement of Part I of the Wildlife and Countryside Act 1981¹.

A wildlife inspector has power to enter and inspect premises, examine specimens and take samples²; and a constable has power to stop and search a person whom he suspects with reasonable cause to be committing or to have committed an offence under Part I, to search or examine anything that person is using and to seize or detain anything which may be evidence of the commission of the offence, as well as powers of entry and a power to take samples³.

Local authorities must take steps to bring the effect of the provisions of Part I and any orders made under it to the attention of the public⁴.

GB conservation bodies⁵ have power to advise or assist any constable, proper officer of a local authority, or wildlife inspector in, or in connection with, the enforcement of the provisions of Part I or any order or regulations made under it⁶.

1 le the Wildlife and Countryside Act 1981 Pt I (ss 1-27).

2 See the Wildlife and Countryside Act 1981 ss 18A-18E, 19XB; and **ANIMALS** vol 2 (2008) PARA 1011.

3 See the Wildlife and Countryside Act 1981 ss 19, 19XA, 19XB; and **ANIMALS** vol 2 (2008) PARAS 1010, 1012.

4 See the Wildlife and Countryside Act 1981 s 25(1); and **ANIMALS** vol 2 (2008) PARA 1014.

5 For these purposes, 'GB conservation bodies' means Natural England, the Countryside Council for Wales and Scottish Natural Heritage: see the Wildlife and Countryside Act 1981 s 27(3A) (added by the Environmental Protection Act 1990 Sch 9 para 11; and substituted by the Natural Environment and Rural Communities act 2006 Sch 11 para 76). As to Natural England and the Countryside Council for Wales see PARAS 523-524.

6 See the Wildlife and Countryside Act 1981 s 24(4); and **ANIMALS** vol 2 (2008) PARA 1014. As to advisory bodies advising the Secretary of State and the Welsh Ministers see s 23; and **ANIMALS** vol 2 (2008) PARA 1014.

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715. Proceedings and penalties.

Proceedings for summary offences under Part I of the Wildlife and Countryside Act 1981¹ may be brought within six months from the date on which evidence sufficient in the prosecutor's opinion to warrant the proceedings came to his knowledge²; but no such proceedings may be brought more than two years after the commission of the offence³.

A local authority⁴ may institute proceedings for any offence under Part I or any order made under it which is committed within its area⁵.

A person who is guilty of an offence under Part I is liable to a penalty⁶.

Any person who attempts to commit an offence under the provisions of Part I relating to the protection of wild species is guilty of an offence, punishable in like manner as for the full offence⁷. Any person who for the purposes of committing such an offence has in his possession anything capable of being used for committing the offence is guilty of an offence, punishable in like manner as for that offence⁸.

1 le the Wildlife and Countryside Act 1981 Pt I (ss 1-27).

2 See the Wildlife and Countryside Act 1981 s 20(2); and **ANIMALS** vol 2 (2008) PARA 1013.

3 See the Wildlife and Countryside Act 1981 s 20(2); and **ANIMALS** vol 2 (2008) PARA 1013.

4 For these purposes, 'local authority' means in England a county, district or London borough council or the Common Council of the City of London, and in Wales a county council or county borough council: Wildlife and Countryside Act 1981 ss 27(1), 71 (definition in s 27(1) amended by the Local Government Act 1985 s 102(2), Sch 17; and the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 65, Sch 18).

5 See the Wildlife and Countryside Act 1981 s 25(2); and **ANIMALS** vol 2 (2008) PARA 1013.

6 See the Wildlife and Countryside Act 1981 s 21; and **ANIMALS** vol 2 (2008) PARA 1013.

7 See the Wildlife and Countryside Act 1981 s 18(1); and **ANIMALS** vol 2 (2008) PARA 1013.

8 See the Wildlife and Countryside Act 1981 s 18(2); and **ANIMALS** vol 2 (2008) PARA 1013.

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(ii) Endangered Species

A. INTERNATIONAL LEGISLATION

716. Convention on International Trade in Endangered Species.

The Convention on International Trade in Endangered Species of Wild Flora and Fauna (commonly known as the 'CITES Convention')¹ makes provision for controlling the trade in species of wild plants (and animals) that are or may be threatened with extinction as a result of international trade. The Convention lists the species which are threatened with extinction², those which are anticipated to come under threat unless trade is regulated³, and those species in relation to which trade is required to be regulated for the purpose of preventing or restricting exploitation⁴, and sets out the means by which trade in those species is to be regulated⁵. Provision is made as to the measures to be taken to enforce the provisions of the Convention by the parties to it⁶ and by international bodies⁷, and as to the operation of the Convention in conjunction with existing domestic legislation and other Conventions⁸. The Convention may be amended⁹, and systems are in place for the resolution of disputes¹⁰, reservations¹¹ and denunciations¹². Provision has been made for giving effect to the Convention in the European Community¹³.

¹ See the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973; Cmnd 5459).

² See the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973; Cmnd 5459) art II, Appendix I. Provision is made for the amendment of Appendices I and II: see art XV.

³ See the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973; Cmnd 5459) art II, Appendix II. See note 2.

⁴ See the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973; Cmnd 5459) art II, Appendix III. Provision is made for the amendment of Appendix III: see art XVI.

⁵ See the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973; Cmnd 5459) arts III-VII.

⁶ See the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973; Cmnd 5459) arts VIII-XII.

⁷ See the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973; Cmnd 5459) art XIII.

⁸ See the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973; Cmnd 5459) art XIV.

⁹ See the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973; Cmnd 5459) art XVII.

¹⁰ See the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973; Cmnd 5459) art XVIII.

11 See the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973; Cmnd 5459) art XXIII.

12 See the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973; Cmnd 5459) art XXIV.

13 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) on the protection of species of wild fauna and flora by regulating trade therein; and PARAS 717-722.

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B. EUROPEAN LEGISLATION

717. Application of the Convention.

International trade in endangered plant species, in so far as it is conducted within, and with, the European Community, is now regulated by a European Regulation¹ giving effect in the Community to the CITES Convention². This legislation is directly applicable in member states³, and is enforced in the United Kingdom by regulations⁴. Domestic legislation controlling the importation, exportation and sale of endangered plant species also exists⁵; however, the wide application of the CITES Convention has rendered that legislation of decreasing significance.

Whereas member states may have additional, and stricter, controls over the trade in plants covered by this legislation⁶, it is clear that regard must be had to the requirements of free trade within the Community; thus controls which are stricter than the relevant legislation, and which are incompatible with the EC Treaty⁷, may be difficult to justify⁸.

Member states fulfil their obligations under the Regulation through the agency of 'management authorities' and 'scientific authorities'⁹; and by controlling the places at which species within its scope may be introduced to or exported from the Community¹⁰. They are under a duty to monitor compliance, and in the event of infringement to take steps to ensure compliance or institute proceedings¹¹. They are also under a duty of communication to each other, to the European Commission and to the public¹².

The Regulation establishes a Scientific Review Group and a Committee on Trade in Wild Flora and Fauna, each of which is composed of representatives of the member states and chaired by a representative of the Commission¹³.

¹ I.e. EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) on the protection of species of wild fauna and flora by regulating trade therein.

² I.e. the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973; Cmnd 5459): see PARA 716. See also **ANIMALS** vol 2 (2008) PARAS 762-767.

The species of fauna and flora affected by these provisions are listed in the Annexes to EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1).

Annex A (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)) sets out the species listed in Appendix I to the CITES Convention for which the member states have not entered a reservation and any species: (1) which is, or may be, in demand for utilisation in the Community or for international trade and which is either threatened with extinction or so rare that any level of trade would imperil the survival of the species; or (2) which is in a genus of which most of the species or which is a species of which most of the sub-species are listed in EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) Annex A in accordance with specified criteria and whose listing in the Annex is essential for the effective protection of those taxa: art 3(1). However, save where art 8 applies (see PARA 720), specimens of species listed in Annex A that have been born and bred in captivity or artificially propagated must be treated in accordance with the provisions applicable to specimens of species listed in Annex B: art 7(1)(a).

Annex B (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)) contains: (a) the species listed in Appendix II to the CITES Convention, other than those listed in EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) Annex A, for which the member states have not entered a reservation; (b) the species listed in Appendix I to the CITES Convention for which a reservation has been entered; (c) any other species not listed in Appendix I or II to the Convention which is subject to levels of international trade that might not be compatible with its survival or with the survival of populations in certain countries, or with the maintenance of the total population at a level consistent with the role of the species in the ecosystems in which it occurs, or whose listing in EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) Annex B for reasons of similarity in

appearance to other species listed in Annex A or Annex B, is essential in order to ensure the effectiveness of controls on trade in specimens of such species; (d) species in relation to which it has been established that the introduction of live specimens into the natural habitat of the Community would constitute an ecological threat to wild species of fauna and flora indigenous to the Community: art 3(2).

Annex C (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)) contains the species listed in Appendix III to the CITES Convention, other than those listed in EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) Annex A or Annex B, for which the member states have not entered a reservation, and the species listed in Appendix II to the CITES Convention for which a reservation has been entered: EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 3(3).

Annex D (substituted by EC Commission Regulation 1332/2005 (OJ L215, 19.08.2005, p 1)) contains species not listed in Annexes A-C which are imported into the Community in such numbers as to warrant monitoring, and the species listed in Appendix III to the CITES Convention for which a reservation has been entered: EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 3(4).

Where the conservation status of species covered by the Regulation warrants their inclusion in one of the Appendices to the CITES Convention, the member states must contribute to the necessary amendments: EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 3(5).

Detailed implementation of EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) is effected by EC Commission Regulation 868/2006 (OJ L166, 19.06.2006, p 1) laying down detailed rules concerning the implementation of EC Council Regulation 338/97.

3 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 22.

4 See the Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, which impose sanctions for the matters mentioned in EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 16; and PARA 722. See also the Control of Trade in Endangered Species (Fees) Regulations 2009, SI 2009/496, which prescribe certain fees payable under this regime. As to the meaning of 'United Kingdom' see PARA 525 note 14

5 See the Endangered Species (Import and Export) Act 1976; PARAS 723-727; and **ANIMALS** vol 2 (2008) PARA 966 et seq.

6 Without prejudice to stricter measures which the member states may adopt or maintain, permits and certificates issued by the competent authorities of the member states in accordance with EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) are valid throughout the Community: see art 11(1). However, a permit or certificate (or subsequent permit or certificate) issued on the false premise that the conditions for it were met, is void, and specimens relating thereto are liable to seizure: art 11(2).

7 See the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179).

8 See Case C-510/99 *Criminal Proceedings against Tridon (Fédération Départementale des Chasseurs de l'Isère, third party)* [2002] All ER (EC) 534, [2001] ECR I-7777, ECJ.

9 As to the designation of management and scientific authorities see EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 13. In the United Kingdom, the designated management authority has sole responsibility for the issue of permits, etc, and a challenge to a refusal to do so cannot be made by way of claiming against the Commissioners for Her Majesty's Revenue and Customs for the return of goods seized following the refusal: *Customs and Excise Comrs v Ray* [2000] 3 CMLR 1095. As to the Commissioners and Officers for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 900-933.

10 As to the designation of customs offices see EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 12 (amended by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)).

11 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 14(1). Member states must also investigate matters brought to their attention by the Commission: art 14(2).

12 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 15 (amended by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)).

13 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) arts 17-19 (art 18 substituted by EC Council Regulation 1882/2003 (OJ L284, 31.10.2003, p 1); and amended by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)).

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718. Introduction of endangered plant species into the Community.

The introduction of specified endangered species into the Community is subject to controls, the stringency of which depends on the classification of the species in question and which are in certain respects stricter than those required by the CITES Convention¹.

Species listed in Annex A² may be so introduced only on the completion of the necessary checks, and the prior presentation, at the border customs office at the point of introduction, of an import permit issued by a management authority³ of the member state of destination⁴.

Species listed in Annex B⁵ may be introduced only on the completion of the necessary checks, and the prior presentation, at the border customs office at the point of introduction, of an import permit issued by a management authority of the member state of destination⁶.

Species listed in Annex C⁷ may be introduced only on the completion of the necessary checks, and the prior presentation, at the border customs office at the point of introduction, of an import notification⁸ and certain documentation as to the lawfulness with which the specimen has been obtained and exported⁹.

Species listed in Annex D¹⁰ may be introduced only on the completion of the necessary checks, and the prior presentation, at the border customs office at the point of introduction, of an import notification¹¹.

In certain circumstances, the Commission may establish general restrictions, or restrictions relating to certain countries of origin, on the introduction into the Community of certain specimens¹².

Derogation from these rules is provided for in respect of specimens in transit through the Community, personal and household effects, and loans, donations and exchanges between scientific institutions¹³.

1 As to the CITES Convention (ie the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973; Cmnd 5459)) see PARA 716.

2 Ie EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) on the protection of species of wild fauna and flora by regulating trade therein, Annex A (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)); see PARA 717.

3 As to management authorities and the classification of species see PARA 717.

4 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(1). Another customs office may be designated for the purposes of art 4 in certain circumstances: see art 4(7) (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)). As to the validity of certificates and permits throughout the Community see EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 11(1); and PARA 717.

The issue of import permits is conditional on: (1) advice given by the competent scientific authority (after considering any opinion by the Scientific Review Group) (art 4(1)(a)); (2) the provision of certain documentary evidence as to the lawful export of the specimen from where it has come (art 4(1)(b)); (3) the conditions of accommodation at the specimen's destination (art 4(1)(c)); (4) the management authority being satisfied that the specimen is not to be used for primarily commercial purposes (art 4(1)(d)); (5) the management authority being satisfied, following consultation with the competent scientific authority, that there are no other factors relating to the conservation of the species which militate against issuance of the import permit (art 4(1)(e)); and (6) in the case of introduction from the sea, the management authority is satisfied that any live specimen

will be so prepared and shipped as to minimise the risk of damage (art 4(1)(f)). As to the scientific authorities and the Scientific Review Group see PARA 717.

The conditions for the issuance of an import permit as referred to in art 4(1)(a), (d) and art 4(2)(a)-(c) (see the text and notes 6-8) do not apply to specimens for which the applicant proves by documentary evidence either that they had previously been legally introduced into or acquired in the Community and that they are, modified or not, being reintroduced into the Community, or that they are worked specimens that were acquired more than 50 years previously: art 4(5).

When a member state rejects an application for a permit or certificate in a case of significance in respect of the objectives of the Regulation, it must immediately inform the European Commission of the rejection and of the reasons for it: art 6(1). The Commission must inform the other member states, who are under a duty to recognise the rejection if duly made: see art 6(2), (4). An applicant for a permit or certificate must disclose the fact of a previous rejection of an application for the same specimens: art 6(3).

As to the fees payable on applications for permits and certificates in England see the Control of Trade in Endangered Species (Fees) Regulations 2009, SI 2009/496, regs 3, 4, Schedule.

5 Ie EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) Annex B (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)): see PARA 717.

6 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(2). The issuance of permits is conditional on: (1) advice given by the competent scientific authority (after considering any opinion by the Scientific Review Group) (see art 4(2)(a); and PARA 717); (2) the conditions of accommodation at the specimen's destination (see art 4(2)(b)); and (3) the provision of certain documentary evidence and evidence as to the appropriate treatment of the specimen (see art 4(2)(c)).

7 Ie EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) Annex C (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)): see PARA 717.

8 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(3). See *R (on the application of Greenpeace) v Secretary of State for the Environment, Food and Rural Affairs* [2002] EWCA Civ 1036, [2002] 1 WLR 3304, [2002] 3 CMLR 533.

9 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(3)(a), (b).

10 Ie EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) Annex D (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)): see PARA 717.

11 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(4).

12 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4(6) (amended by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)).

13 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 7(2)-(4) (art 7(2) amended by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1); and art 7(3)-(4) substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)).

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719. Export and re-export from the Community.

The export or re-export of specified endangered species from the Community is subject to controls, the nature of which depends on the classification of the species in question.

Species listed in Annex A¹ may be exported or re-exported only on the completion of the necessary checks, and the prior presentation, at the customs office at which the export formalities are completed, of an export permit or re-export certificate issued by the management authority² of the member state in which the specimens are located³.

Species listed in Annex B⁴ may be exported or re-exported only on the completion of the necessary checks, and the prior presentation, at the customs office at which the export formalities are completed, of an export permit or re-export certificate issued by the management authority of the member state in which the specimens are located⁵.

Species listed in Annex C⁶ may be exported or re-exported only on the completion of the necessary checks, and the prior presentation, at the customs office at which the export formalities are completed, of an export permit or re-export certificate issued by the management authority of the member state in which the specimens are located⁷.

Where an application for a re-export certificate concerns specimens introduced into the Community under an import permit issued by another member state, the management authority must first consult the management authority which issued the permit⁸.

The competent scientific authority in each member state must monitor the issuance of export permits for specimens of species listed in Annex B and actual exports of such specimens, and advise the competent management authority, in writing, of suitable measures to be taken to limit the issuance of export permits for specimens of any species where appropriate⁹.

1 le EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) on the protection of species of wild fauna and flora by regulating trade therein, Annex A (substituted by EC Commission Regulation 1332/2005 (OJ L215, 19.08.2005, p 1)); see PARA 717.

2 As to management authorities and the classification of species see PARA 717.

3 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 5(1). See also art 6; and PARA 718. As to the validity of certificates and permits throughout the Community see art 11(1); and PARA 717.

The issue of export permits is conditional on:

- 107 (1) advice given by the competent scientific authority (art 5(2)(a));
- 108 (2) the provision of certain documentary evidence as to the lawful obtaining of the specimen from where it has come (art 5(2)(b));
- 109 (3) the management authority being satisfied that:
 - 5. (a) any live specimen will be so prepared and shipped as to minimise the risk of damage (art 5(2)(c)(i));
and
5
 - 6. (b) certain specimens will not be used for primarily commercial purposes or that, in certain cases, an import permit has been issued (art 5(2)(c)(ii)); and
6

- 110 (4) the management authority being satisfied, following consultation with the competent scientific authority, that there are no other factors relating to the conservation of the species which militate against issuance of the export permit (art 5(2)(d)). As to scientific authorities see PARA 717.

A re-export certificate may be issued only when the conditions referred to in heads (3) and (4) have been met, and when the applicant provides documentary evidence that the specimens were lawfully introduced into the Community: art 5(3). 'Lawfully' here refers to the requirements of: (i) EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1); (ii) its predecessor (ie EC Council Regulation 3626/82 (OJ L384, 31.12.82, p 1) (repealed)); (iii) if before 1984, the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973; Cmnd 5459) (the 'CITES Convention') (see PARA 716); or (iv) if before the CITES Convention became applicable, the applicable law: EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 5(3).

The conditions for the issuance of an export permit or re-export certificate as referred to in art 5(2)(a) (see head (1)) and art 5(2)(c)(ii) (see head (3)(b)) do not apply to worked specimens that were acquired more than 50 years previously, or dead specimens and parts and derivatives thereof for which the applicant provides documentary evidence that they were legally acquired before these provisions became applicable to them: art 5(6).

As to the issue of certificates see art 10. As to the fees payable on applications for permits and certificates in England see the Control of Trade in Endangered Species (Fees) Regulations 2009, SI 2009/496, regs 3, 4, Schedule.

4 le EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) Annex B (substituted by EC Commission Regulation 1332/2005 (OJ L215, 19.08.2005, p 1)): see PARA 717.

5 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 5(4). The issue of export certificates is subject to compliance with the conditions set out in art 5(2)(a), (b), (c)(i), (d) (see note 3): see art 5(4). The issue of re-export certificates is subject to compliance with the conditions set out in art 5(2)(c)(i), (d), (3) (see note 3): see art 5(4). In either case the applicant must provide documentary evidence that the specimens were lawfully introduced into the Community: art 5(4).

6 le EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) Annex C (substituted by EC Commission Regulation 1332/2005 (OJ L215, 19.08.2005, p 1)): see PARA 717.

7 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 5(4); and note 5.

8 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 5(5) (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)).

9 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 5(7) (amended by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)).

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720. Control of commercial activities.

The purchase, offer to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain and sale, keeping for sale, offering for sale or transporting for sale of specimens of the species listed in Annex A¹ is prohibited². Exemption from this prohibition may be granted by issue of a certificate to that effect by a management authority³ of the member state in which the specimens are located, on a case-by-case basis where the specimens:

- 330 (1) were acquired before these provisions became applicable to them⁴;
- 331 (2) are worked specimens that were acquired more than 50 years previously⁵;
- 332 (3) were introduced into the Community in compliance with the provisions of the European Regulation⁶ and are to be used for purposes which are not detrimental to the survival of the species concerned⁷;
- 333 (4) are artificially propagated specimens of a plant species or are parts or derivatives of such specimens⁸;
- 334 (5) are intended for breeding or propagation purposes from which conservation benefits will accrue to the species concerned⁹;
- 335 (6) are intended for research or education aimed at the preservation or conservation of the species¹⁰; or
- 336 (7) originate in a member state and were taken in accordance with the legislation in force in that member state¹¹.

General derogations from this prohibition may be defined by the Commission¹².

The prohibition also applies to specimens of the species listed in Annex B¹³ except where it can be proved to the satisfaction of the competent authority of the member state concerned that such specimens were acquired, and, if they originated outside the Community, were introduced into it, in accordance with the legislation in force for the conservation of wild fauna and flora¹⁴.

The competent authorities of the member states may sell any specimen listed in Annexes B to D¹⁵ which they have confiscated pursuant to the European Regulation, provided that it is not thus returned directly to the person or entity from whom it was confiscated or who was party to the offence; and such specimens may then be treated for all purposes as if they had been legally acquired¹⁶.

1 Ie EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) on the protection of species of wild fauna and flora by regulating trade therein, Annex A (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)): see PARA 717.

2 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(1).

3 As to management authorities and the classification of species see PARA 717. As to the issue of certificates see EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 10. As to the validity of certificates and permits throughout the Community see art 11(1); and PARA 717.

4 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(3)(a).

5 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(3)(b).

6 Ie EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1).

- 7 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(3)(c).
- 8 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(3)(d).
- 9 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(3)(f).
- 10 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(3)(g).
- 11 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(3)(h).
- 12 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(4) (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)).
- 13 le EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) Annex B (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)): see PARA 717.
- 14 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(5).
- 15 le EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) Annexes B-D (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)): see PARA 717.
- 16 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8(6).

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721. Movement of live specimens.

Any movement within the Community of a live specimen of a species listed in Annex A¹ from the location indicated in the import permit² or in any certificate issued in compliance with the European Regulation³ requires prior authorisation from a management authority⁴ of the member state in which the specimen is located⁵. In other cases of movement, the person responsible for moving the specimen must be able, where applicable, to provide proof of the legal origin of the specimen⁶. Such authorisation may be granted only when the competent scientific authority⁷ of such member state or, where the movement is to another member state, the competent scientific authority of the latter, is satisfied as to the intended accommodation for a live specimen at the place of destination⁸. The authorisation must be confirmed by issuance of a certificate⁹; and must, where applicable, be immediately communicated to a management authority of the member state in which the specimen is to be located¹⁰.

Where a live specimen of a species listed in Annex B¹¹ is moved within the Community, the holder of the specimen may relinquish it only after ensuring that the intended recipient is adequately informed of the accommodation, equipment and practices required to ensure the specimen will be properly cared for¹². When any live specimens are transported into, from or within the Community or are held during any period of transit or transshipment, they must be prepared, moved and cared for in a manner such as to minimise the risk of damage¹³.

The European Commission may establish restrictions on the holding or movement of such live specimens of species in relation to which restrictions on introduction into the Community have been established¹⁴.

1 Ie EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) on the protection of species of wild fauna and flora by regulating trade therein, Annex A (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)); see PARA 717.

2 As to permits see PARA 718.

3 Ie EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1).

4 As to management authorities see PARA 717.

5 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 9(1).

6 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 9(1).

7 As to scientific authorities see PARA 717.

8 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 9(2)(a).

9 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 9(2)(b). As to the issue of certificates see art 10. As to the validity of certificates and permits throughout the Community see art 11(1); and PARA 717.

10 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 9(2)(c).

11 Ie EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) Annex B (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)); see PARA 717.

12 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 9(4).

13 EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 9(5).

14 See EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 9(6) (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)). As to restrictions on introduction into the Community see art 4(6); and
PARA 718.

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722. Enforcement in the United Kingdom.

A justice of the peace may in certain circumstances issue a warrant authorising a constable to enter and search premises¹ if there are reasonable grounds for believing either that there is any unlawfully imported² or acquired³ specimen on those premises⁴, or that an offence⁵ has been or is being committed and that evidence of the offence may be found on any premises⁶. A justice may issue a warrant only if:

- 337 (1) admission to the premises has been refused⁷; or
- 338 (2) refusal is apprehended⁸; or
- 339 (3) the case is one of urgency⁹; or
- 340 (4) an application for admission would defeat the object of the entry¹⁰.

An authorised person¹¹ may, at any reasonable time and (if required to do so) upon producing evidence that he is so authorised, enter and inspect any premises where he has reasonable cause to believe a specimen is being kept, for the purpose of:

- 341 (a) ascertaining whether the premises are being used for purchase, offering to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial gain, sale, keeping for sale, offering for sale or transporting for sale contrary to the relevant EC legislation¹²;
- 342 (b) verifying information supplied by a person for the purpose of obtaining a permit or certificate¹³;
- 343 (c) ascertaining whether any live specimen is being kept on premises at the address specified in the import permit issued for that specimen as that at which the specimen is to be kept¹⁴; or
- 344 (d) ascertaining whether any condition of a permit or certificate has been or is being observed¹⁵.

Impersonation or obstruction of an authorised person is an offence¹⁶.

A person who:

- 345 (i) knowingly or recklessly makes an import notification¹⁷ which is false in a material particular¹⁸;
- 346 (ii) for the purpose of obtaining, whether for himself or another, the issue of a permit or certificate, either knowingly or recklessly makes a statement or representation which is false in a material particular¹⁹ or furnishes a document or information which is false in a material particular²⁰;
- 347 (iii) for any purpose in connection with the relevant EC legislation²¹, knowingly or recklessly uses or furnishes a false, falsified or invalid permit or certificate or one altered without authorisation²²;
- 348 (iv) knowingly falsifies or alters any permit or certificate²³;
- 349 (v) knowingly uses a permit, certificate or import notification for any specimen other than that for which it was issued²⁴;

- 350 (vi) knowingly uses a specimen of a species listed in Annex A²⁵ otherwise than in accordance with the authorisation given at the time of issue of the import permit or subsequently²⁶;
- 351 (vii) knowingly contravenes any condition or requirement of a permit or certificate issued in accordance with the relevant EC legislation²⁷;
- 352 (viii) without reasonable excuse causes or permits a specimen listed in Annex A to be transferred from an address which was specified in a permit or certificate, or keeps such specimen otherwise than at that address, without prior written authorisation from the Secretary of State²⁸;
- 353 (ix) purchases, offers to purchase, acquires for commercial purposes, displays to the public for commercial purposes, uses for commercial gain, sells, keeps for sale, offers for sale or transports for sale any specimen of a species listed in Annex A²⁹;
- 354 (x) purchases, offers to purchase, acquires for commercial purposes, sells, keeps for sale, offers for sale or transports for sale any specimen of a species listed in Annex B³⁰ which has been imported or acquired unlawfully³¹;
- 355 (xi) dishonestly furnishes a statement confirming the lawful acquisition or importation of a specimen³²;
- 356 (xii) pretends, with intent to deceive, to be an authorised person³³; or
- 357 (xiii) intentionally obstructs an authorised person acting in accordance with his powers of entry and search³⁴,

is guilty of an offence³⁵.

An import notification, permit or certificate in relation to which an offence has been committed is void³⁶. The court is also empowered under certain circumstances to order forfeiture of a specimen³⁷.

Proof of lawful import or export may be required by an officer of Revenue and Customs, who has power to detain a specimen until such proof is furnished³⁸.

1 'Premises' includes any place, and, in particular, includes any vehicle, vessel, aircraft, hovercraft, tent or movable structure: Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 2(1).

2 'Import' means introduce into the Community; and 'imported unlawfully' means introduced into the Community contrary to the provisions of either EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) on the protection of species of wild fauna and flora by regulating trade therein (the 'Principal Regulation') or EC Commission Regulation 865/2006 (OJ L166, 19.06.2006, p 1) laying down detailed rules concerning the implementation of EC Council Regulation 338/97 (the 'Subsidiary Regulation'): Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 2(1) (amended by SI 2007/2952).

3 'Acquired' means, in relation to a specimen, taken from the wild or the point at which it was artificially propagated; and 'acquired unlawfully' means acquired contrary to the provisions of the Principal Regulation or the Subsidiary Regulation: see the Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 2(1).

4 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 9(1)(a).

5 As to the offences which may be committed in connection with the trade in endangered plant species see PARA 722.

6 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 9(1)(b). A warrant authorising a constable to enter and search premises may authorise persons to accompany that constable: see reg 9(1). Constables also have a power of seizure: see reg 10.

7 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 9(2)(a).

8 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 9(2)(b).

9 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 9(2)(c).

10 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 9(2)(d).

11 Is a person duly authorised in writing by the Secretary of State for these purposes: Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 2(1). The power to authorise a person for these purposes has not been transferred, in so far as it is exercisable in relation to Wales, to the Welsh Ministers. As to the Secretary of State and the Welsh Ministers see PARA 519.

12 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 9(4)(a). The relevant EC legislation is EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8 (see PARA 720).

13 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 9(4)(b). For these purposes references to a 'permit' or 'certificate' are references to any of: (1) an import permit of the kind referred to in EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 4 (see PARA 718); (2) an export permit or re-export certificate of the kind referred to in art 5 (see PARA 719); (3) a certificate of any of the kinds referred to in art 10; (4) a label of the kind referred to in art 7(4); (5) a certificate of the kind referred to in EC Commission Regulation 865/2006 (OJ L166, 19.06.2006, p 1) art 17, 30 or 37; or (6) in so far as, in accordance with art 72, reliance may be placed on a permit or certificate issued under EC Council Regulation 3626/82 (OJ L384, 31.12.82, p 1) (repealed) and EC Commission Regulation 3418/83 (OJ L344, 7.12.83, p 1) (repealed), a permit or certificate issued under those Regulations: Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 2(2) (amended by SI 2007/2952).

14 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 9(4)(c).

15 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 9(4)(d).

16 See the Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 9(6), (7); and PARA 722.

17 As to import notifications see PARA 718.

18 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 3(2).

19 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 3(1)(a).

20 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 3(1)(b).

21 Is EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) on the protection of species of wild fauna and flora by regulating trade therein (see PARA 717 et seq), or EC Commission Regulation 865/2006 (OJ L166, 19.06.2006, p 1) laying down detailed rules concerning the implementation of EC Council Regulation 338/97.

22 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 3(1)(c).

23 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 4(1).

24 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 4(2).

25 Is EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) Annex A (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)): see PARA 717.

26 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 4(3).

27 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 6.

28 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 7(1). The power to give written authorisation for these purposes has not been transferred, in so far as it is exercisable in relation to Wales, to the Welsh Ministers. As to the Secretary of State and the Welsh Ministers see PARA 519.

29 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 8(1) (reg 8 substituted by SI 2005/1574). This does not apply to anything done under, and in accordance with the terms of, any certificate or general derogation granted pursuant to EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 8 (see PARA 720): Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 8(3) (as so substituted). A person is not guilty of this offence if he proves to the satisfaction of the court that at the time the alleged offence was committed he had no reason to believe that the specimen was a specimen of a species listed in EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) Annex A (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)) (see PARA 717): Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 8(4) (as so substituted).

30 le EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) Annex B (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)) (see PARA 717).

31 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 8(2) (as substituted: see note 29). A person is not guilty of this offence if he proves to the satisfaction of the court that at the time the alleged offence was committed he had no reason to believe that the specimen was a specimen of a species listed in EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) Annex B (substituted by EC Commission Regulation 407/2009 (OJ L123, 19.05.2009, p 1)): Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 8(4) (as so substituted). Nor is a person guilty of this offence if he proves to the satisfaction of the court that at the time when the specimen first came into his possession he made such inquiries (if any) as in the circumstances were reasonable in order to ascertain whether it was imported or acquired unlawfully; and that at the time the alleged offence was committed, he had no reason to believe that the specimen was imported or acquired unlawfully: reg 8(5) (as so substituted). A person is taken to have made such inquiries if he produces to the court a statement which was furnished by the person from whom he obtained possession of the specimen (the 'supplier'), which was signed by the supplier or by a person authorised by him, stating that the supplier made inquiries at the time the specimen came into his possession in order to ascertain whether it was a specimen which had been imported or acquired unlawfully, and that the supplier had no reason to believe at the time he relinquished possession of the specimen to the accused that the article was at that time a specimen which had been imported or acquired unlawfully: reg 8(6) (as so substituted). It is an offence for a person to furnish such a statement which he knows to be false in a material particular, or recklessly furnish a certificate which is false in a material particular: reg 8(7) (as so substituted).

32 See the Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 8(7) (as substituted: see note 29). As to lawful and unlawful acquisition and importation see PARA 722 notes 2, 3.

33 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 9(7). As to the meaning of 'authorised person' see PARA 722 note 11.

34 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 9(6). For an authorised person's powers of entry and search see PARA 722.

35 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, regs 3(1), (2), 4(1)-(3), 6, 7(2), 8(8), 9(6), (7). A person guilty of an offence under any of these provisions except that of obstructing an authorised person is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both, or on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both: regs 3(1), (2), 4(1), (2), 6, 7(2), 8(8), 9(7). On summary conviction, a person guilty of the offence of obstructing an authorised person is liable for every such obstruction to a fine not exceeding level 3 on the standard scale: reg 9(6). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. See *R v Azadehdel* (1989) 11 Cr App R (S) 377 (sentence reduced as the appellant had dealt with plants rather than animals). As to offences by corporations see the Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 12.

36 Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 3(3). This is expressed to be without prejudice to EC Council Regulation 338/97 (OJ L61, 3.3.97, p 1) art 11(2)(a) (see PARA 717).

37 See the Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 11.

38 See the Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 5. As to the Commissioners and officers for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 900-933.

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C. DOMESTIC LEGISLATION

(A) RESTRICTIONS ON SALE

723. Sale of endangered plant species under licence.

Certain species of plant may be sold only under licence¹. These species are listed in the Endangered Species (Import and Export) Act 1976², and species may be added to, or removed from, this list at the discretion of the Secretary of State³. Licences for the sale of such species are issued by the Secretary of State⁴. Licences may be, to any degree, general or specific⁵; may be issued to all persons, to persons of a class or to a particular person⁶; may be subject to compliance with any specified conditions⁷; and may be modified or revoked at any time by the Secretary of State (subject to which they are valid for such period as is stated in the licence)⁸. It is an offence to make false representations for the purpose of obtaining a licence⁹.

1 See the Endangered Species (Import and Export) Act 1976 s 4(1B) (added by the Wildlife and Countryside Act 1981 Sch 10 para 5(2)). It is an offence for an unlicensed person to trade in any such plant: see PARA 724.

2 See the Endangered Species (Import and Export) Act 1976 Sch 5 (added by the Wildlife and Countryside Act 1981 Sch 10 Pt III; and substituted by SI 1996/2684).

3 The Secretary of State may, after consulting any scientific authority or authorities, by order make such modifications in any of the Schedules to the Endangered Species (Import and Export) Act 1976 as he considers necessary or desirable: (1) to give effect to any amendment to the Convention on International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973; Cmnd 5459) (the 'CITES Convention') (see PARA 716); (2) to give effect to the inclusion of anything in or the withdrawal of anything from Appendix III to the Convention (kinds of animals and plants the trade in which a party identifies as needing international control) at the instance of any party to the Convention; (3) to promote the conservation in any area of animals or plants of any kind which appear to the Secretary of State to be, or to be likely to become, endangered there as a result of international trade; (4) to remove any restriction which is for the time being imposed by virtue of the Endangered Species (Import and Export) Act 1976 on the importation and exportation of animals or plants of any particular kind or of any particular items and which does not in the opinion of the Secretary of State promote such conservation; (5) to restrict the importation of animals or plants of any kind which appear to the Secretary of State to be unlikely to survive for any appreciable time if they are kept in the United Kingdom; and (6) to facilitate the more effective or more convenient administration of any restriction which is for the time being imposed by virtue of the Endangered Species (Import and Export) Act 1976 on the importation and exportation of animals or plants of any particular kind or of any particular items: s 3 (amended by the Wildlife and Countryside Act 1981 Sch 10 para 4). At the date at which this volume states the law, no order had been made under the Endangered Species (Import and Export) Act 1976 s 3. As to the meaning of 'United Kingdom' see PARA 525 note 14.

Scientific authorities are appointed by the Secretary of State to advise on any question which he may refer to the authority, and on any question on which it considers it should offer its advice in connection with the administration of the Endangered Species (Import and Export) Act 1976, and generally in connection with the importation and exportation of animals and plants of kinds which appear to the Secretary of State or, as the case may be, the authority to be, or to be likely to become, endangered as a result of international trade, and items derived wholly or partly from animals and plants of those kinds: see s 2; and **ANIMALS** vol 2 (2008) PARA 967.

Note that the Secretary of State's powers under the Endangered Species (Import and Export) Act 1976 have not been transferred, in so far as they are exercisable in relation to Wales, to the Welsh Ministers. As to the Secretary of State and the Welsh Ministers see PARA 519.

4 Endangered Species (Import and Export) Act 1976 s 4(1B) (as added: see note 1). The Secretary of State may by order prescribe a fee for the issue of a licence: ss 1(5), 4(1B) (as so added). At the date at which this volume states the law, no such order had been made.

5 Endangered Species (Import and Export) Act 1976 s 1(4)(a).

6 Endangered Species (Import and Export) Act 1976 s 1(4)(aa) (s 1(4)(aa), (ab) added, and s 1(4)(c) amended, by the Wildlife and Countryside Act 1981 Sch 10 para 1(3)).

7 Endangered Species (Import and Export) Act 1976 s 1(4)(ab) (as added: see note 6).

8 Endangered Species (Import and Export) Act 1976 s 1(4)(b), (c) (s 1(4)(c) as amended: see note 6). Licences for the importation and exportation of endangered plant species take the same form, and are subject to the same procedures and conditions, as licences for the sale of endangered plant species: see **PARA 725**.

9 If, for the purpose of obtaining, whether for himself or another, the issue of a licence, a person makes a statement or representation which he knows to be false in a material particular, furnishes a document or information which he knows to be false in a material particular, recklessly makes a statement or representation which is false in a material particular, or recklessly furnishes a document or information which is false in a material particular, he is liable on summary conviction to a fine not exceeding the prescribed sum or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: Endangered Species (Import and Export) Act 1976 s 1(6) (amended by the Wildlife and Countryside Act 1981 Sch 10 para 1(2); and by virtue of the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) **PARA 141**. Any such offence will void a licence obtained by virtue of it: Endangered Species (Import and Export) Act 1976 s 1(7).

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724. Unlicensed sale of endangered plant species.

It is an offence for any unlicensed person¹ to sell, offer or expose for sale², or have in his possession or transport for the purpose of sale, any plant, whether live or dead³, which may be sold only under licence⁴, or any part of or anything which derives from or is made wholly or partly from any such plant⁵. A person is not, however, guilty of this offence if he proves to the satisfaction of the court that at the time when the restricted article⁶ first came into his possession he made such inquiries⁷ (if any) as in the circumstances were reasonable in order to ascertain whether it was a restricted article⁸, and that at the time the alleged offence was committed he had no reason to believe that it was a restricted article⁹.

¹ As to licensing see PARA 723.

² For these purposes any reference to 'sale' includes references to hire, barter and exchange: Endangered Species (Import and Export) Act 1976 s 4(6) (amended by the Wildlife and Countryside Act 1981 Sch 10 para 5(5)).

³ Endangered Species (Import and Export) Act 1976 s 4(1A)(b) (s 4(1A)-(1C) added by the Wildlife and Countryside Act 1981 Sch 10 para 5(2)). For these purposes a reference to a 'dead plant' of any particular kind includes a reference to a plant of that kind which is frozen, dried or preserved by chemicals or which, although for any reason not complete, is substantially complete and externally substantially resembles a complete dead plant of the kind concerned: Endangered Species (Import and Export) Act 1976 s 12(3).

⁴ The kinds of plants which may be sold only under licence are listed in the Endangered Species (Import and Export) Act 1976 Sch 5 (added by the Wildlife and Countryside Act 1981 Sch 10 Pt III; and substituted by SI 1996/2684). See further PARA 723 note 3.

⁵ Endangered Species (Import and Export) Act 1976 s 4(1A)(c) (as added: see note 3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the prescribed sum, or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: s 4(5) (amended by the Wildlife and Countryside Act 1981 Sch 10 para 5(4); and by virtue of the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141. Where an offence under the Endangered Species (Import and Export) Act 1976 which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director (which in relation to a body corporate established by or under any enactment for the purpose of carrying on under public ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate), manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly: s 8.

No offence is committed under s 4(1A) if the plant in question falls within s 4(1) (see PARA 727) or derives from such a plant, or has been imported, or is a part of or derives from or is made wholly or partly from anything which has been imported, before 30 October 1981 (ie the date on which the Wildlife and Countryside Act 1981 was passed): Endangered Species (Import and Export) Act 1976 s 4(1A) (as so added: see note 3).

⁶ For these purposes 'restricted article' means anything falling within the Endangered Species (Import and Export) Act 1976 s 4(1A) (see the text and notes 1-5): s 4(1C) (as added: see note 3).

⁷ A person is taken to have made the necessary inquiries if he produces to the court a certificate which was furnished by the person from whom the accused obtained possession of the restricted article (the 'supplier'), which was signed by the supplier or by a person authorised by him, and which states that the supplier made inquiries at the time the restricted article came into his possession in order to ascertain whether it was a restricted article, and the supplier had no reason to believe at the time he relinquished possession of the restricted article to the accused that the article was at that time a restricted article: Endangered Species (Import and Export) Act 1976 s 4(3). A person who furnishes for these purposes a certificate which he knows to

be false in a material particular, or recklessly furnishes for those purposes a certificate which is false in a material particular, is guilty of an offence punishable on summary conviction by a fine not exceeding the prescribed sum or on conviction on indictment by imprisonment for a term not exceeding two years or a fine or both: s 4(4), (5) (s 4(5) as amended: see note 5).

8 Endangered Species (Import and Export) Act 1976 s 4(2)(a) (s 4(2) amended by the Wildlife and Countryside Act 1981 Sch 10 para 5(3)).

9 Endangered Species (Import and Export) Act 1976 s 4(2)(b) (as amended: see note 8). The punishments and defences applicable in relation to an offence under these provisions also apply to offences in connection with the sale or display of unlawfully imported species: see [PARA 727](#).

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(B) RESTRICTIONS ON IMPORTATION AND EXPORTATION

725. Importation and exportation of plant species under licence.

There is no species of plant which may be imported or exported only under licence¹, although the Secretary of State² may at his discretion prescribe species whose import and export are to be so restricted³. Were any such licences to be required they would be in the same form as licences for the sale of endangered plant species (and subject to similar procedures and conditions)⁴.

1 See the Endangered Species (Import and Export) Act 1976 Sch 2 (substituted by SI 1996/2684).

2 Note that the Secretary of State's powers under the Endangered Species (Import and Export) Act 1976 have not been transferred, in so far as they are exercisable in relation to Wales, to the Welsh Ministers. As to the Secretary of State and the Welsh Ministers see PARA 519.

3 See the Endangered Species (Import and Export) Act 1976 s 1(1)(b), (2). As to the circumstances under which the Secretary of State may prescribe species, and as to the advice he must seek in so doing, see PARA 723 note 3. It is an offence for an unlicensed person to trade in any such prescribed species: see PARA 727.

Any person duly authorised in writing by the Secretary of State may, at any reasonable time and (if required to do so) upon producing evidence that he is so authorised, enter any premises where plants which may be imported or exported only under licence are kept (whether temporarily or permanently) in order to ascertain whether any of the plants kept there have been imported contrary to s 1: s 1(10) (added by the Wildlife and Countryside Act 1981 Sch 10 para 2). Any person who wilfully obstructs a person acting in pursuance of this power is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Endangered Species (Import and Export) Act 1976 s 1(11) (added by the Wildlife and Countryside Act 1981 Sch 10 para 3; and amended by virtue of the Criminal Justice Act 1982 ss 37, 46). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. As to the commission of offences by corporations see PARA 724 note 5.

4 See the Endangered Species (Import and Export) Act 1976 s 1(4)-(7); and PARA 723. There are additional procedural requirements. The Secretary of State must submit any application for a licence for the importation and exportation of endangered plant species to whichever one of the scientific authorities (see PARA 723 note 3) he considers is the best able to advise him as to whether a licence should be issued in pursuance of the application and, if so, its terms; and, before he issues or declines to issue a licence in pursuance of the application, he must allow the authority a reasonable time so to advise him: s 1(3). This does not, however, apply in relation to an application of any description if the scientific authority concerned has advised the Secretary of State as to whether licences should be issued in pursuance of applications of that description and, if so, their terms: s 1(3A) (s 1(3A), (3B) added by the Wildlife and Countryside Act 1981 Sch 10 para 1(1)). Where the Secretary of State is satisfied that the issue of a licence authorising the importation or exportation of any item which is part of or derives from or is made wholly or partly from a plant which may be imported or exported only under licence would facilitate the importation or exportation of that item, he may, if he considers it expedient to do so, issue such a licence: Endangered Species (Import and Export) Act 1976 s 1(3B) (as so added).

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726. Proof of lawful exportation.

Provision is made so that where any live or dead plant¹ is being imported or exported or has been imported or brought to any place for the purpose of being exported, a person commissioned by the Commissioners for Revenue and Customs² or a person authorised by them may require any person possessing or having control of the plant to furnish proof that its importation or exportation is or was not unlawful³. If such proof is not furnished to the satisfaction of the Commissioners the plant is liable to forfeiture⁴. The Commissioners are entitled to recover costs incurred in pursuance of these powers⁵.

1 As to the meaning of 'dead plant' see PARA 724 note 3.

2 As to the Commissioners and officers for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 900-933.

3 See the Endangered Species (Import and Export) Act 1976 s 1(8)(a). The reference in the text to importation or exportation being or not being unlawful is a reference to importation or exportation being or not being unlawful under s 1: s 1(8). There are currently no plant species which it is unlawful to import or export under s 1: see PARA 725.

4 Endangered Species (Import and Export) Act 1976 s 1(8). The reference in the text to forfeiture is a reference to forfeiture under the Customs and Excise Management Act 1979: Endangered Species (Import and Export) Act 1976 s 1(8) (amended by the Customs and Excise Management Act 1979 Sch 4 para 12 Table Pt I). See further the Customs and Excise Management Act 1979 ss 49-51; and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARAS 993-995.

5 Where, in the case of a live plant of any kind which is condemned or deemed to be condemned as forfeited, the Commissioners for Revenue and Customs incur any expenses in connection with, or with a view to, its return to the wild or its being kept at premises (whether within or outside the United Kingdom) which are suitable for the keeping of plants of that kind, those expenses may be recovered, as a debt due to the Crown, from the importer or intending exporter of the plant or any person possessing or having control of it at the time of its seizure: Endangered Species (Import and Export) Act 1976 s 1(9) (added by the Wildlife and Countryside Act 1981 Sch 10 para 2). As to the meaning of 'United Kingdom' see PARA 525 note 14.

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727. Sale and display of species unlawfully imported.

Although there is no species of plant which may be imported or exported only under licence¹, it continues to be an offence to sell, offer or expose for sale², possess or transport for the purpose of sale, or display to the public³, anything which has been imported in contravention of any licensing provisions⁴. The punishments and defences applicable to such an offence are the same as those which apply to the unlicensed sale of endangered plant species⁵.

1 See the Endangered Species (Import and Export) Act 1976 Sch 2; and PARA 725.

2 As to the meaning of 'sale' see PARA 724 note 2.

3 For these purposes a restricted article (ie anything falling within the Endangered Species (Import and Export) Act 1976 s 4(1) (see the text and note 4): s 4(1C) (s 4(1B), (1C) added by the Wildlife and Countryside Act 1981 Sch 10 para 5(2))) is displayed to the public if it is displayed to the public generally or any section of it, and (in either case) whether in return for money or otherwise: Endangered Species (Import and Export) Act 1976 s 4(7).

4 Endangered Species (Import and Export) Act 1976 s 4(1)(a) (amended by the Wildlife and Countryside Act 1981 Sch 10 para 5(1)); Endangered Species (Import and Export) Act 1976 s 4(1B) (as added: see note 3).

5 See the Endangered Species (Import and Export) Act 1976 s 4(2)-(5); and PARA 724.

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(8) HABITAT AND BIODIVERSITY

(i) Conservation of Habitats etc under the Habitats Directive

728. Implementation of the European Directives.

The Conservation (Natural Habitats etc) Regulations 1994¹ and the Offshore Marine Conservation (Natural Habitats etc) Regulations 2007² implement the provisions of the Habitats Directive³. The Secretary of State or the Welsh Ministers⁴ and the nature conservation bodies⁵ must exercise their functions⁶ under the enactments relating to nature conservation⁷ so as to secure compliance with the requirements of the Habitats Directive⁸; and in relation to marine areas⁹ or offshore marine areas¹⁰ any competent authority¹¹ having functions relevant to marine conservation must also exercise those functions so as to secure compliance with the Habitats Directive¹².

Natural England or the Countryside Council for Wales¹³ may provide advice, assistance or make representation to any competent authority on any matter connected with the discharge of the competent authority's functions under the Conservation (Natural Habitats etc) Regulations 1994¹⁴.

1 le the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716 (modified by SI 1995/2803; SI 1996/1243; and amended by SI 1996/525; SI 2007/1842; SI 2009/2438). See also Planning Policy Guidance Note 9: Nature Conservation (October 1994). Nothing in the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, is to be construed as excluding the application of the protection of wildlife provisions of the Wildlife and Countryside Act 1981 Pt I (ss 1-27) (see **ANIMALS** vol 2 (2008) PARA 805) in relation to plants or animals also protected under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, Pt III (regs 38-46A): reg 104.

2 le the Offshore Marine Conservation (Natural Habitats etc) Regulations 2007, SI 2007/1842: see PARA 736.

3 le EC Council Directive 92/43 (OJ L206, 22.7.92, p 7) on the conservation of natural habitats and of wild fauna and flora: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(1), (2A)(i) (reg 2(1) amended, and reg 2(2A) added, by SI 2007/1843); Offshore Marine Conservation (Natural Habitats etc) Regulations 2007, SI 2007/1842, reg 2(1)(a)(i). See *R (on the application of Hart District Council) v Secretary of State for Communities and Local Government* [2008] 2 P & CR 302.

See also EC Council Directive 79/409 (OJ L103, 25.4.79, p 1) on the conservation of wild birds (the 'Wild Birds Directive') (amended by EC Commission Directive 97/49 (OJ L223, 13.8.97, p 9)): Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(1), (2A)(ii) (as so amended and added respectively); Offshore Marine Conservation (Natural Habitats etc) Regulations 2007, SI 2007/1842, reg 2(1)(a)(ii). See *R (on the application of Fisher) v English Nature* [2004] EWCA Civ 663, [2004] 4 All ER 861; *R (on the application of Brown) v Secretary of State for Transport* [2004] EWHC 819 (Admin), [2004] Env LR 2, [2004] 1 P & CR 21.

4 As to the Secretary of State and the Welsh Ministers see PARA 519.

5 'Nature conservation bodies' means Natural England or the Countryside Council for Wales: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 2(1), 4(1) (reg 4(1) substituted by SI 2007/1843). References to the 'appropriate nature conservation body' are to be construed accordingly: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 2(1), 4(1). As to Natural England and the Countryside Council for Wales see PARA 523-524.

6 'Functions' includes powers and duties: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(1).

7 'Enactment' includes a local enactment and an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978 (see **STATUTES** vol 44(1) (Reissue) PARA 1381): Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(1).

8 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 3(2). See Case C-209/04 *Commission of the European Communities v Austria* [2006] ECR I-2755, [2006] Env LR 39; Case C-6/04 *Commission of the European Communities v United Kingdom* [2005] ECR I-9017, [2006] Env LR 29.

9 'Marine area' means any land covered (continuously or intermittently) by tidal waters or any part of the sea in or adjacent to Great Britain up to the seaward limit of territorial waters: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(1).

10 'Offshore marine area' means any part of the seabed and subsoil situated in any area designated under the Continental Shelf Act 1964 s 1(7) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636) and any part of the waters within British fishery limits (except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man): Offshore Marine Conservation (Natural Habitats etc) Regulations 2007, SI 2007/1842, reg 2(2). As to the territorial sea of the United Kingdom see **WATER AND WATERWAYS** vol 100 (2009) PARA 31; and as to the meaning of 'United Kingdom' see PARA 525 note 14.

11 'Competent authority' includes any minister, government department, public or statutory undertaker, public body of any description or person holding a public office, and the expression also includes any person exercising any function of a competent authority in the United Kingdom: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 2(1), 6(1); Offshore Marine Conservation (Natural Habitats etc) Regulations 2007, SI 2007/1842, reg 5(1). 'Statutory undertaker' has the meaning assigned to it by the National Parks and Access to the Countryside Act 1949 (see PARA 649 note 3): Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(1).

'Public body' includes any local authority, joint board or joint committee; and 'public office' means: (1) an office under Her Majesty; (2) an office created or continued in existence by a public general Act of Parliament; or (3) an office the remuneration in respect of which is paid out of money provided by Parliament: reg 6(2). For the purposes of reg 6(2), 'local authority', for these purposes: (a) in relation to England, means a county council, district council or London borough council, the Common Council of the City of London, the sub-treasurer of the Inner Temple, the under treasurer of the Middle Temple or a parish council; (b) in relation to Wales, means a county council, county borough council, or community council: reg 6(3) (amended by SI 1996/525). For the purposes of the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 6(2), 'joint board' and 'joint planning board' mean: (i) a joint or special planning board constituted for a national park by order under the Local Government Act 1972 Sch 17 para 1 or 3 (repealed), or a joint planning board within the meaning of the Town and Country Planning Act 1990 s 2 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 30); and (ii) a joint committee appointed under the Local Government Act 1972 s 102(1)(b) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 371): Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 6(3). The Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, apply to national park authorities as if they were local authorities for the purposes of reg 6(3): National Park Authorities (England) Order 1996, SI 1996/1243, Sch 5 para 14; National Park Authorities (Wales) Order 1995, SI 1995/2803, Sch 5 para 20 (added by SI 1996/534). As to national park authorities see PARA 526.

In relation to offshore marine areas, 'public office' means (A) an office under Her Majesty; (B) an office created or continued in existence by a public general Act of Parliament; or (C) an office the remuneration in respect of which is paid out of money provided by Parliament: Offshore Marine Conservation (Natural Habitats etc) Regulations 2007, SI 2007/1842, reg 5(2).

12 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 3(3), (4) (reg 3(3) amended by SI 2009/2438); and the Offshore Marine Conservation (Natural Habitats etc) Regulations 2007, SI 2007/1842, reg 6(1), (2).

13 See note 5.

14 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 110 (added by SI 2007/1843). Natural England or the Countryside Council for Wales may undertake, commission or support (whether by financial means or otherwise) such research and scientific work as it considers is required for the purposes of providing advice or assistance or making representations: see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 110.

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729. Lists of European sites.

The Secretary of State or the Welsh Ministers¹ must propose a list of sites eligible for identification as of Community importance, indicating with respect to each site which natural habitat types and which species that are native to Great Britain the site hosts². Once a site of Community importance has been adopted³ the Secretary of State or the Welsh Ministers must designate that site as a Special Area of Conservation as soon as possible and within six years at most⁴. The European Commission may also propose sites hosting a priority natural habitat type or priority species⁵ which may be added to the list if the Secretary of State agrees or the Welsh Ministers agree or if the Council so decides⁶. The Secretary of State or the Welsh Ministers must compile and maintain a register of European sites⁷ in Great Britain and must notify the appropriate nature conservation body⁸ as soon as possible after including a site in the register or amending or removing an entry from it⁹. As soon as practicable, the appropriate nature conservation body must give notice to every owner and occupier of land within the site, every local planning authority in whose area the site, or any part of it, is situated and such other persons or bodies as the Secretary of State or Welsh Ministers may direct¹⁰. An entry in the register relating to a European site in England and Wales is a local land charge¹¹.

1 As to the Secretary of State and the Welsh Ministers see PARA 519.

2 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 7(1). For animal species ranging over wide areas these sites must correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction; and for aquatic species which range over wide areas, such sites must be proposed only where there is a clearly identifiable area representing the physical and biological factors essential to their life and reproduction: reg 7(2). Where appropriate the Secretary of State or the Welsh Ministers may propose modification of the list in the light of the results of the surveillance referred to in the Habitats Directive art 11: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 7(3). The list had to be transmitted to the Commission on or before 5 June 1995, together with specified information on each site: see reg 7(4). As to the Habitats Directive see PARA 728 note 3.

A site cannot be excluded from the list of candidate sites on the ground that the habitats and species it contains will or may be affected by implementation of an existing planning permission or licence: *R (on the application of Newsum) v Welsh Assembly (No 2)* [2005] EWHC 538 (Admin), [2005] 2 P & CR 576, [2005] JPL 1486. Economic considerations are irrelevant when designating 'wild bird protection areas': see Case C-44/95 *R v Secretary of State for the Environment, ex p Royal Society for the Protection of Birds (Port of Sheerness Ltd, intervening)* [1997] QB 206, [1997] ECR I-3805, ECJ. A member state cannot take account of economic, social and cultural requirements or regional and local characteristics when selecting and defining the boundaries of a site: Case C-371/98 *R (on the application of First Corporate Shipping Ltd) v Secretary of State for the Environment, Transport and the Regions (World Wide Fund for Nature UK, intervening)* [2001] All ER (EC) 177, [2000] ECR I-9235 ECJ.

3 In accordance with the procedure set out in the Habitats Directive art 4 para 2. As to sites of Community importance see art 1: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(2).

4 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 8(1). The Secretary of State or the Welsh Ministers must establish priorities for the designation of sites in the light of: (1) the importance of the sites for the maintenance or restoration at a favourable conservation status of a natural habitat type in the Habitats Directive Annex I, or a species in Annex II and for the coherence of Natura 2000; and (2) the threats of degradation or destruction to which those sites are exposed: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 8(2). 'Natura 2000' means the European network of special areas of conservation, and special protection areas under the Wild Birds Directive, provided by the Habitats Directive art 3(1): Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(1). For the site information format under the Habitats Directive art 4 for proposed Natura 2000 sites see EC Commission Decision 97/266 (OJ L107, 27.4.97, p 1). As to the Wild Birds Directive see PARA 728 note 3.

As to sites so designated see the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001, SI 2001/1754 (amended by SI 2007/77; SI 2007/1842).

5 In accordance with the Habitats Directive art 5(1): see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 9.

6 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 9 (substituted by SI 2007/1843).

7 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 11(1). 'European site' means: (1) a special area of conservation; (2) a site of Community importance; (3) a site hosting a priority natural habitat or priority species; (4) a classified area; or (5) a site in Great Britain which has been proposed to the Commission by the Secretary of State or the Welsh Ministers as a site eligible for designation as a special area of conservation for the purposes of meeting the United Kingdom's obligations until such time as the site is placed on the list of sites of Community importance or agreement is reached or a decision is taken not to place the site on that list: see regs 2(1), 10 (reg 10 amended by SI 2000/192; SI 2007/1843); Habitats Directive arts 1, 4(2), 5(1), (3); Wild Birds Directive art 4(1), (2). 'Register' means the register of European sites in Great Britain provided for by the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 11. As to the meaning of 'United Kingdom' see PARA 525 note 14. The Secretary of State or the Welsh Ministers must include in it:

- 111 (a) special areas of conservation, as soon as they are designated (reg 11(2)(a));
- 112 (b) sites of Community importance as soon as they are placed on the list until they are designated as special areas of conservation (reg 11(2)(b));
- 113 (c) any site hosting a priority natural habitat type or priority species in respect of which consultation is initiated under the Habitats Directive art 5(1) during the consultation period or pending a Council decision under art 5(3) (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 11(2)(c) (amended by SI 2000/192));
- 114 (d) areas classified pursuant to the Wild Birds Directive art 4(1) or art 4(2) as soon as they are so classified or, if they have been classified before 30 October 1994, as soon as practicable after that date (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 11(2)(d)); and
- 115 (e) any site in England or Wales which has been proposed to the Commission by the Secretary of State or the Welsh Ministers as a site eligible for designation as a special area of conservation for the purposes of meeting the United Kingdom's obligations under the Habitats Directive art 4(1), until such time as head (5) applies (reg 11(2)(e) (added by SI 2000/192; and substituted by SI 2007/1843)).

The Secretary of State or the Welsh Ministers may, if appropriate, amend the entry in the register relating to a European site (reg 11(3)) and must remove the relevant entry if a special area of conservation is declassified by the Commission under the Habitats Directive art 9, or if a site otherwise ceases to fall within any of the categories listed above (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 11(4)). The Secretary of State or the Welsh Ministers must keep a copy of the register available for public inspection at all reasonable hours and free of charge: reg 11(5).

8 As to the meaning of 'nature conservation body' see PARA 728 note 5.

9 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 12(1). Notification of the inclusion of a site in the register must be accompanied by a copy of the register entry (reg 12(2)) and notification of the amendment of an entry in the register must be accompanied by a copy of the amended entry (reg 12(3)). Each nature conservation body must keep copies of the register entries relating to European sites in its area available for public inspection at all reasonable hours and free of charge: reg 12(4).

10 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 13(1). Notice of the inclusion of a site in the register, or of the amendment of an entry in the register, must be accompanied by a copy of so much of the relevant register entry as relates to land owned or occupied by or, as the case may be, within the area of, the person or authority to whom the notice is given: reg 13(2). The Secretary of State or the Welsh Ministers; may give directions as to the form and content of such notices: reg 13(3). As to the service of notices under the regulations see reg 108.

11 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 14. As to local land charges generally see **LAND CHARGES** vol 26 (2004 Reissue) PARA 671 et seq.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(8) HABITAT AND BIODIVERSITY/(i) Conservation of Habitats etc under the Habitats Directive/730. Management agreements.

730. Management agreements.

The appropriate nature conservation body¹ may enter into a management agreement with every owner, lessee or occupant of land² forming part of a European site³ or adjacent land for the management, conservation, restoration or protection of the site or any part of it⁴.

1 As to the meaning of 'appropriate nature conservation body' see PARA 728 note 5.

2 As to the meaning of 'land' see PARA 761 note 2.

3 As to the meaning of 'European site' see PARA 729 note 7.

4 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 16; and PARA 761.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(8) HABITAT AND BIODIVERSITY/(i) Conservation of Habitats etc under the Habitats Directive/731. Control of potentially damaging operations.

731. Control of potentially damaging operations.

Notifications, specifying any operations appearing likely to damage the flora, fauna, or geographical or physiographical features which make the land¹ of special interest, in force under earlier legislation² have effect under the Conservation (Natural Habitats etc) Regulations 1994, and may be amended³. The owner or occupier of the land must not carry out any operation specified in the notification unless one of them has given the appropriate nature conservation body⁴ written notice of the proposal to carry out the operation and certain conditions are fulfilled⁵. A person who contravenes this provision without reasonable excuse commits an offence⁶. It is a reasonable excuse that the operation was an emergency operation or was authorised by a planning permission⁷.

1 As to the meaning of 'land' see PARA 761 note 2.

2 Ie under the Wildlife and Countryside Act 1981 s 28 (see PARA 674).

3 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 18, 87.

4 As to the meaning of 'appropriate nature conservation body' see PARA 728 note 5.

5 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 19(1), (2). As to the supplementary provisions relating to consents and notices see regs 20, 21. As to the service of notices under the regulations see reg 108.

6 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 19(3). Such a person is liable on summary conviction to a fine not exceeding level 4 on the standard scale: reg 19(3). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. Such proceedings must be brought by the appropriate nature conservation body or by another person with the consent of the Director of Public Prosecutions: see reg 19(5), (6).

7 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 19(4). The permission referred to in the text is a planning permission under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 217 et seq, 419 et seq).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(8) HABITAT AND BIODIVERSITY/(i) Conservation of Habitats etc under the Habitats Directive/732. Special nature conservation orders.

732. Special nature conservation orders.

The Secretary of State or the Welsh Ministers¹ may make a special nature conservation order in respect of any land within a European site² specifying operations, whether on land specified in that order or elsewhere and whether or not within the European site, which appear to be of a kind which, if carried out in certain circumstances or in a particular manner, would be likely to destroy³ or damage the flora, fauna, or geographical or physiographical features by reason of which the land is a European site⁴.

No person to whom notice⁵ has been given may carry out, on any land within a European site in respect of which such an order is in force, or in the place by reference to which the operation is specified, any operation specified in the order unless the conditions of notice⁶ and consent⁷ are fulfilled⁸.

Any person who contravenes this provision without reasonable excuse commits an offence⁹. It is a reasonable excuse that the operation was an emergency operation or was authorised by a planning permission¹⁰. Where a person is convicted under this provision the court may make a restoration order, requiring him to carry out, within any specified period, specified operations for the purposes of restoring the land to its former condition¹¹. Failure to comply, without reasonable excuse, with a restoration order is an offence¹².

There is provision for compensation for the effect of the order on an agricultural unit¹³.

1 As to the Secretary of State and the Welsh Ministers see PARA 519.

2 As to the meaning of 'European site' see PARA 729 note 7.

3 'Destroy', in relation to an egg, includes doing any thing to the egg which is calculated to prevent it from hatching; and 'destruction' is to be construed accordingly: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(1).

4 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 22(1), 27A(2) (reg 22(1) amended, and reg 27A added, by SI 2009/2438). If an order under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 22(1) specifies any operation of a kind not carried out, or proposed to be carried out, on land within a European site, the order must specify the operation by reference to the place where it is being, or is proposed to be, carried out: reg 22(7) (added by SI 2009/2438). As to the procedural requirements for special nature conservation orders see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 22(3), Sch 1. As to the coming into operation of orders see Sch 1 para 1; as to the publicity requirements for orders see Sch 1 para 2 (amended by SI 2009/2438); as to unopposed orders see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, Sch 1 para 3; as to opposed orders see Sch 1 para 4; as to the restriction on power to amend orders or confirm them with modifications see Sch 1 para 5; as to notice of final decision on order see Sch 1 para 6; as to proceedings for questioning the validity of orders see Sch 1 para 7; and as to interpretation see Sch 1 para 8. A special nature conservation order may be amended or revoked by a further order: reg 22(2). A special nature conservation order in relation to land specifying operations on land in England and Wales is a local land charge: reg 22(4) (amended by SI 2009/2438). As to local land charges generally see **LAND CHARGES** vol 26 (2004 Reissue) PARA 671 et seq.

A person authorised in writing by the appropriate nature conservation body may, at any reasonable time and (if required to do so) upon producing evidence that he is so authorised, enter any land:

116 (1) to ascertain whether a special nature conservation order should be made, or if an offence under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 23 is being, or has been, committed on that land;

117 (2) to ascertain the amount of any compensation payable under reg 25 in respect of an interest in that land; or

118 (3) to affix a notice in accordance with reg 23(2D) or Sch 1 para 2(4);

but this does not authorise any person to enter a dwelling: see reg 90(1) (amended by SI 2009/2438). As to the meaning of 'appropriate nature conservation body' see PARA 728 note 5. A person must not demand admission as of right to any land which is occupied unless either 24 hours' notice of the intended entry has been given to the occupier, or the purpose of the entry is to ascertain if an offence under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 23 is being, or has been, committed on that land: reg 90(2). A person who intentionally obstructs a person in the exercise of his powers under this provision commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale: reg 90(3). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

Existing orders in force under the Wildlife and Countryside Act 1981 s 29 (repealed) have effect as if made under this provision: see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 27.

5 In respect of any land within a European site in respect of which a special nature conservation order is made, the Secretary of State may serve a notice on any person carrying out, or proposing to carry out, any operation of a kind specified in that order which appears to the Secretary of State to be likely to destroy or damage the flora, fauna, or geological or physiographical features by reason of which the land is a European site: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 23(2B) (reg 23(2B)-(2D) added by SI 2009/2438). Such notice must specify details of the operation, details of the European site to which the notice relates, and the date on which the notice takes effect: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 23(2C) (as so added). Where the identity of a person carrying out, or proposing to carry out, the operation is not reasonably ascertainable, the Secretary of State may, instead of serving a notice under reg 23(2B), publish a notice in one local newspaper circulating in the area in which the land to which the notice relates is situated, and affix a copy or copies of the notice to some conspicuous object or objects on the land to which the notice relates: reg 23(2D) (as so added). As to the meaning of 'land' see PARA 761 note 2. As to the giving of notice see re 27A(1) (as added: see note 4).

6 The notice condition is: (1) where the operation is carried out on land, that the operation is carried out, or caused or permitted to be carried out, by the owner or occupier of the land, and, after notice is given, one of them has given the appropriate nature conservation body written notice of a proposal to carry out the operation, specifying its nature and where it is proposed to carry it out; and (2) in any other case, that, after notice is given, the person proposing to carry out the operation has given the appropriate nature conservation body written notice of a proposal to carry out the operation, specifying its nature and where it is proposed to carry it out: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 23(1A) (added by SI 2009/2438).

7 The consent condition is: (1) that the operation is carried out with the written consent of the appropriate nature conservation body; or (2) that the operation is carried out in accordance with the terms of a management agreement: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 23(2) (amended by SI 2009/2438). A consent under head (1) may be given subject to conditions, and for a limited period, specified in the consent: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 23(2A) (added by SI 2009/2438).

8 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 23(1) (amended by SI 2009/2438). The conditions are that one of the following is fulfilled: (1) the operation is carried out with the written consent of the appropriate nature conservation body; and (2) the operation is carried out in accordance with the terms of a management agreement: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 23(2). As to management agreements see PARA 761. As to supplementary provisions relating to consents see reg 24 (amended by SI 2009/2438). As to the service of notices under the regulations see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 108.

9 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 23(3). Such a person is liable on summary conviction to a fine not exceeding the statutory maximum, and on conviction on indictment to a fine: reg 23(3). Any notice previously given under the Wildlife and Countryside Act 1981 s 29 (repealed) has effect as if given under this provision: see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 27. As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

10 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 23(4). The permission referred to in the text is a planning permission under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 217 et seq, 419 et seq).

11 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 26(1)-(4).

12 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 26(5). Such an offence is punishable on summary conviction by a fine not exceeding level 5 on the standard scale: reg 26(5). If the specified operations are not carried out within the specified time, the appropriate nature conservation body has power to enter the land and carry out those operations and recover the expense from the person against whom the order was made: see reg 26(6).

13 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 25, 91-93 (reg 25 substituted, and regs 91, 92 amended, by SI 2009/2438). 'Agricultural unit' means land which is occupied as a unit for agricultural purposes, including any dwelling house or other building occupied by the same person for the purpose of farming the land: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 25(2) (as so substituted).

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733. Byelaws.

The appropriate nature conservation body¹ may make byelaws² for the protection of a European site³. These byelaws must not interfere with:

- 358 (1) the exercise by any person of a right vested in him as owner, lessee or occupier of land in the European site, or in any such surrounding or adjoining area⁴;
- 359 (2) the exercise of any public right of way⁵;
- 360 (3) the exercise of any functions⁶ of statutory undertakers⁷;
- 361 (4) the exercise of any functions of an internal drainage board, a district salmon fishery board or the Commissioners appointed under the Tweed Fisheries Act 1969⁸; or
- 362 (5) the provision of an electronic communications code network or the exercise of any right conferred by or in accordance with the electronic communications code on the provider of any such network⁹.

Compensation is payable by the appropriate nature conservation body where the exercise of any person's right is prevented or hindered by the coming into operation of the byelaws¹⁰.

1 As to the meaning of 'appropriate nature conservation body' see PARA 728 note 5.

2 ie under the National Parks and Access to the Countryside Act 1949 s 20 (see PARA 672).

3 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 28(1). Such byelaws may (except in relation to a European marine site: see PARA 735) make provision of any of the following kinds: reg 28(2), (7). They may:

- 119 (1) provide for prohibiting or restricting the entry into, or movement within, the site of persons, vehicles, boats and animals (reg 28(3)(a));
- 120 (2) prohibit or restrict the killing, taking, molesting or disturbance of living creatures of any description in the site, the taking, destruction or disturbance of eggs of any such creature, the taking of, or interference with, vegetation of any description in the site, or the doing of anything in the site which will interfere with the soil or damage any object in the site (reg 28(3)(b));
- 121 (3) contain provisions prohibiting the depositing of rubbish and the leaving of litter in the site (reg 28(3)(c));
- 122 (4) prohibit or restrict, or provide for prohibiting or restricting, the lighting of fires in the site or the doing of anything likely to cause a fire in the site (reg 28(3)(d));
- 123 (5) prohibit or restrict any activity referred to in heads (1)-(4) within such area surrounding or adjoining the site as appears to the appropriate nature conservation body requisite for the protection of the site (reg 28(4));
- 124 (6) provide for the issue, on such terms and subject to such conditions as may be specified in the byelaws, of permits authorising (a) entry into the site or any such surrounding or adjoining area as is mentioned in head (5); or (b) the doing of anything within the site, or any such surrounding or adjoining area, where such entry, or doing that thing, would otherwise be unlawful under the byelaws (reg 28(5));
- 125 (7) be made so as to relate either to the whole or to any part of the site, or of any such surrounding or adjoining area as is mentioned in head (5), and may make different provision for different parts of it (reg 28(6)).

Existing byelaws made under the National Parks and Access to the Countryside Act 1949 s 20 in relation to land which becomes within a European site or adjacent to such a site have effect as if made under s 20 as applied by virtue of the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 28: see reg 31. As to the meaning of 'European site' see PARA 729 note 7. As to the meaning of 'land' see PARA 761 note 2.

As to supplementary provisions relating to byelaws see regs 94-95.

4 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 29(a).

5 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 29(b).

6 As to the meaning of 'functions' see PARA 728 note 6.

7 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 29(c). As to the meaning of 'statutory undertaker' see PARA 728 note 11.

8 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 29(d).

9 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 29(e) (substituted by SI 2003/2155). As to electronic communications code networks see **TELECOMMUNICATIONS** vol 97 (2010) PARA 174. As to the electronic communications code see **TELECOMMUNICATIONS** vol 97 (2010) PARA 151 et seq.

10 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 30, 96 (reg 96 amended by SI 2009/1307).

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734. Powers of compulsory acquisition.

Where the appropriate nature conservation body¹ is satisfied:

- 363 (1) that it is unable, as respects any interest in land² within a European site³, to conclude a management agreement⁴ on terms appearing to it to be reasonable⁵; or
- 364 (2) where it has entered into a management agreement as respects such an interest, that a breach of the agreement has occurred which prevents or impairs the satisfactory management of the site⁶,

it may acquire that interest compulsorily⁷.

1 As to the meaning of 'appropriate nature conservation body' see PARA 728 note 5.

2 As to the meaning of 'land' see PARA 761 note 2.

3 As to the meaning of 'European site' see PARA 729 note 7.

4 As to management agreements see PARA 761 et seq.

5 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 32(1)(a).

6 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 32(1)(b). Such a breach is not to be treated as having occurred by virtue of any act or omission capable of remedy unless there has been default in remedying it within a reasonable time after notice given by the appropriate nature conservation body requiring the remedying of it: reg 32(2). As to the service of notices under the regulations see reg 108. Disputes relating to such a breach of a management agreement must be determined by an arbitrator appointed for the purpose: see reg 32(3).

7 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 32(1). As to supplementary provisions relating to compulsory acquisition of land see regs 98-99.

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735. Special provisions as to European marine sites.

The appropriate nature conservation body¹ may install markers indicating the existence and extent of a European marine site², and then advise other relevant authorities³ as to the conservation objectives for that site and any operations which may cause deterioration of natural habitats or the habitats of species, or disturbance of species, for which the site has been designated⁴. The relevant authorities may establish a management scheme for a European marine site⁵ and the relevant minister⁶ may give directions to the relevant authorities to establish or amend such a management scheme⁷. Byelaws may be made for the protection of a European marine site⁸.

1 As to the meaning of 'appropriate nature conservation body' see PARA 728 note 5.

2 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 33(1). This is subject to obtaining any necessary consent under the Coast Protection Act 1949 s 34 (see **WATER AND WATERWAYS** vol 101 (2009) PARA 533 et seq). 'European marine site' means a European site which consists of, or so far as it consists of, marine areas: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(1). As to the meaning of 'European site' see PARA 729 note 7. As to the meaning of 'marine area' see PARA 728 note 9.

3 The 'relevant authorities', in relation to a marine area or European marine site, are such of the following as have functions in relation to land or waters within or adjacent to that area or site: (1) a nature conservation body (see PARA 728 note 5); (2) a county council, county council borough, district council, London borough council; (3) the Environment Agency (see PARA 528; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq), a water undertaker (see **WATER AND WATERWAYS** vol 100 (2009) PARA 134 et seq) or sewerage undertaker (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 999 et seq), or an internal drainage board (see **WATER AND WATERWAYS** vol 101 (2009) PARA 569 et seq); (4) a navigation authority within the meaning of the Water Resources Act 1991 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 189); (5) a harbour authority within the meaning of the Harbours Act 1964 (see **PORTS AND HARBOURS** vol 36(1) (2007 Reissue) PARA 619); (6) a lighthouse authority; (7) a river purification board or a district salmon fishery board; (8) a local fisheries committee constituted under the Sea Fisheries Regulation Act 1966 (see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 964 et seq) or any authority exercising the powers of such a committee; and (9) a national park authority: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 2(1), 5 (amended by virtue of the Environment Act 1995 Sch 22 para 233(1); and SI 1996/525; SI 2007/1843).

4 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 33(2).

5 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 34.

6 I.e., in relation to a site in England, the Secretary of State or, in relation to a site in Wales, the Welsh Ministers: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 34(5). As to the Secretary of State and the Welsh Ministers see PARA 519.

7 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 35(1)-(4).

8 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 36 (substituted by the Marine and Coastal Access Act 2009 Sch 11 para 4). This provision as substituted came into force on 12 November 2009 in so far as it grants power to make regulations or an order (see s 324(1)(c)); and it came fully into force in relation to England on 12 January 2010 (see s 324(2)(b)), but at the date at which this volume states the law no day had been appointed for its full commencement in relation to Wales (see s 324(3)). In relation to Wales, the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 36 (as originally enacted) therefore continues to apply.

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736. Offshore marine area.

The Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007¹ make provision for implementing the Wild Birds Directive² and the Habitats Directive³ in relation to the offshore marine area⁴, offshore marine installations⁵ and certain ships and aircraft⁶. Those regulations:

- 365 (1) impose a duty on competent authorities⁷ exercising functions relevant to marine conservation to do so in such a way as to secure compliance with the requirements of the Wild Birds Directive and the Habitats Directive⁸;
- 366 (2) make provision for the selection of offshore marine areas as sites of Community importance and designation as special areas of conservation to be protected under the Habitats Directive⁹;
- 367 (3) make provision for the classification and notification of sites as special protection areas under the Wild Birds Directive¹⁰;
- 368 (4) enable any person to be heard in relation to matters under heads (2) and (3)¹¹;
- 369 (5) provide for the Secretary of State to compile and maintain a register of European offshore marine sites¹² and make notification of changes to the register¹³;
- 370 (6) make provision for the Joint Nature Conservation Committee to establish conservation objectives for a European offshore marine site on the register¹⁴;
- 371 (7) provide for any competent authority¹⁵ which exercises functions in relation to a European offshore marine site to establish a management scheme for that site¹⁶, and take reasonable steps to exercise its function in accordance with that scheme¹⁷;
- 372 (8) make provision for conservation measures relating to special areas of conservation¹⁸;
- 373 (9) provide that competent authorities, in so far as their functions may be exercised to secure the appropriate steps are taken to avoid the disturbance of species and the deterioration of habitat or habitat types, must exercise their functions to secure that such steps are taken¹⁹;
- 374 (10) require the competent authority to assess the implication for a European site²⁰ or European offshore marine site before deciding to undertake or give any consent, permission or other authorisation for a plan or project, and only agree to such a plan or project if it has ascertained that it will not adversely affect the integrity of the European site or European offshore marine site²¹;
- 375 (11) provide for the review of any consent, permission or other authorisation made before a site became a European offshore marine site or a European site that would have required an assessment under head (10) if the consent, permission or other authorisation had been sought after the site became a European offshore marine site or European site²²;
- 376 (12) make provision for the review of existing decisions²³;
- 377 (13) make provision for co-ordination where more than one competent authority is involved²⁴;
- 378 (14) create offences for the protection of wild birds, animals and plants, which in some instances are subject to defences²⁵;
- 379 (15) require the Secretary of State to make arrangements for surveillance and monitoring of species and habitats in the offshore marine area and to take further

- action for the protection of species, in the light of that surveillance or monitoring, and provide for offences in relation to that surveillance or monitoring²⁶;
- 380 (16) make provision for the licensing of activities which would otherwise be offences under head (14) or head (15)²⁷;
- 381 (17) give to the Secretary of State and competent authorities power to appoint or make arrangements for the appointment of persons ('wildlife officers') to investigate offences under the regulations²⁸; and
- 382 (18) deal with a number of miscellaneous matters including education, research and reporting to the European Commission on the implementation of the Habitats Directive²⁹.

1 le the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842: reg 1.

2 As to the Wild Birds Directive see PARA 728 note 3.

3 As to the Habitats Directive see PARA 728 note 3.

4 As to the meaning of 'offshore marine area' see PARA 728 note 10.

5 For these purposes, 'offshore marine installation' means any artificial island, installation or structure (other than a ship) which is situated (1) in any part of the waters in any area designated under the Continental Shelf Act 1964 s 1(7) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636); or (2) in any part of the waters in any area designated under the Energy Act 2004 s 84(4) (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1310): Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 2(2).

6 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842; and the text and notes 7-28.

7 As to the meaning of 'competent authority' see PARA 728 note 11.

8 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 6. See also PARA 728.

9 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, regs 7-11. For similar provision in relation to European sites see PARA 729.

10 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, regs 12-13.

11 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 14.

12 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, regs 15-16. 'European offshore marine site' means: (1) a special area of conservation (reg 15(a)); (2) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive (Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 15(b)); (3) a site hosting a priority natural habitat type or priority species in respect of which consultation has been initiated under the Habitats Directive art 5(1), during the consultation period or pending a decision of the Council under art 5(3) (Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 15(c)); (4) a site classified as a special protection area under reg 12 (see the text and note 10) (reg 15(d)); (5) a site which has been proposed to the Commission by the Secretary of State as a site eligible for designation as a special area of conservation for the purposes of meeting the United Kingdom's obligations under the Habitats Directive art 4(1) until such time as: (a) the site is placed on the list of sites of Community importance referred to in the third sub-paragraph of the Habitats Directive art 4(2) (Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 15(e)(i)); or (b) agreement is reached or a decision is taken pursuant to the Habitats Directive art 4(2) that the site is not to be placed on that list (Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 15(e)(ii)). As to the meaning of 'United Kingdom' see PARA 525 note 14.

13 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 17.

14 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 18. As to the Joint Nature Conservation Committee see PARA 525.

15 As to the meaning of 'competent authority' see PARA 728 note 11.

16 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 19. Such a management scheme: (1) must set out how the competent authorities establishing the scheme propose to exercise their functions so as to secure in relation to that site compliance with the requirements of the Habitats Directive; and (2) where it relates to a site which has been designated as a special area of conservation, must set out how, for the purposes of securing compliance with the requirements of the Habitats Directive art 6(1), the competent authorities establishing it propose to exercise their functions in order to maintain or restore at a favourable conservation status: (a) the natural habitat types listed in the Habitats Directive Annex I which are found at the site; and (b) the species listed in Annex II which are found at the site: see the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 19.

17 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 20. Where a European offshore marine site that adjoins a special area of conservation or a special protection area which has been (respectively) designated or classified by another member state, the Secretary of State must consult that state in relation to the co-ordinated management of the site and the area in question: reg 21.

18 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 22.

19 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 23.

20 As to the meaning of 'European site' see PARA 729 note 7.

21 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 25. However, where the competent authority is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which may be of a social or economic nature), the competent authority may agree to the plan or project notwithstanding a negative assessment of the implications for the site: see reg 26. Provision is made for compensatory measures to ensure that Natura 2000 is protected: see regs 30, 31. As to the meaning of 'Natura 2000' see PARA 729 note 4. For similar provision made by the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, see PARA 748. Provision is made for the Joint Nature Conservation Committee to provide advice or make representations to any competent authority in relation to an assessment: see reg 109 (added by SI 2007/1843).

22 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 27.

23 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 28. For similar provision made by the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, see PARA 748.

24 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 29. For similar provision made by the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, see PARA 748.

25 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 32. A person is guilty of an offence if:

- 126 (1) without reasonable excuse, he intentionally disturbs animals of specified species while the animals are in a site which has been designated as a special area of conservation, or in a site in the offshore marine area which has been placed on the list referred to in the Habitats Directive art 4(2), and the disturbance is likely significantly to affect their ability to survive, breed, or rear or nurture their young, or the local distribution or abundance of that species (see the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 32(4), (5) (reg 32(4) amended by SI 2009/7));
- 127 (2) without reasonable excuse, he intentionally disturbs any wild bird while it is in a site which has been classified as a special protection area and which is of a species of bird for which the site was so classified, where the disturbance is such as is likely to impair the bird's ability to survive, breed, or rear or nurture its young, or significantly affects the local distribution or abundance of the species to which the bird belongs (reg 32(6));
- 128 (3) without reasonable excuse, he intentionally or recklessly damages or destroys a natural habitat type listed in the Habitats Directive Annex I: (a) in any site in the offshore marine area which has been placed on the list referred to in art 4(2), or which has been designated as a special area of conservation; and (b) by reason of which in the case of a site placed on the list referred to in art 4(2), the site in question was placed on that list, or in the case of a site designated as a special area of conservation, the site in question was so designated (see the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 32(7)); and

- 129 (4) without reasonable excuse, he intentionally or recklessly damages or destroys: (a) the habitat in any site which has been designated as a special area of conservation and which supports any animals of specified species; (b) the habitat in any site in the offshore marine area which has been placed on the list referred to in the Habitats Directive art 4(2) and which supports any animals of specified species; and (c) the habitat in any site which has been classified as a special protection area which supports any birds of the species for which the site was so classified (see the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 32(8)).

These offences apply to any person: (i) in any part of the waters within British fishery limits; (ii) on any ship in any part of the waters within British fishery limits; (iii) on a British aircraft over any part of the waters within British fishery limits; (iv) on or under an offshore marine installation; or (v) on any aircraft above an offshore marine installation, in so far as the presence of the aircraft above that installation is for purposes connected with the use of the installation (see reg 32(1)). As to British fishery limits see **AGRICULTURE AND FISHERIES** vol 1(2) (2007 Reissue) PARA 796.

A person in any part of the waters comprised in the offshore marine area, on a ship in any part of the waters comprised in the offshore marine area, or a British aircraft over the waters comprised in the offshore marine area, on or under an offshore marine installation, or on any aircraft above an offshore marine installation in so far as the presence of the aircraft above that installation is for purposes connected with the use of the installation, is guilty of an offence (see reg 33) where: (A) he deliberately captures, injures or kills any wild bird or takes, damages or destroys the nest of any wild bird while that nest is being built or takes or destroys an egg of a wild bird (see reg 34); (B) he keeps any live or dead wild bird or any part of, or anything derived from such a bird or an egg of a wild bird or any part of such an egg (see reg 35); (C) he uses for the purpose of capturing or killing any wild bird a prohibited means or any other means which is indiscriminate or capable of causing the local disappearance of any species of wild bird (see reg 36); or (D) he sells, offers or exposes for sale or has in his possession or transports for the purpose of sale any live or dead wild bird, or any part of, or anything derived from, such a bird or an egg of a wild bird (see reg 37). A person guilty of an offence under head (A), (C) or (D) is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment, to a fine: reg 38. A person is also guilty of an offence if he: (aa) deliberately captures, injures, or kills any wild animal of a European protected species (reg 39(1)(a)); (bb) deliberately disturbs wild animals of any such species (reg 39(1)(b)); (cc) deliberately takes or destroys the eggs of such an animal (reg 39(1)(c)); (dd) damages or destroys, or does anything to cause the deterioration of, a breeding site or resting place of such an animal (reg 39(1)(d)); (ee) keeps or transports, sells or exchanges or offers for sale or exchange any live or dead animal or part of an animal which has been taken from the wild, and which is of a species or sub-species listed in the Habitats Directive Annex IV(a), and any part of, or anything derived from, such an animal or any such part of an animal (see the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 39(2), (3)); or (ff) uses prohibited means or any other means of capturing or killing specified animals or animals of a European protected species where the capture or killing is otherwise permitted, which is indiscriminate and capable of causing the local disappearance of, or serious disturbance to, the population (see reg 41). For the purposes of head (aa), disturbance of animals includes in particular any disturbance which is likely to impair their ability to survive, to breed or reproduce, to rear or nurture their young, or in the case of animals of a hibernating or migratory species, to hibernate or migrate, or to affect significantly the local distribution or abundance of the species to which they belong: reg 39(1A) (added by SI 2009/7). A person guilty of an offence under heads (aa)-(ff) is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine: Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 42. A person is guilty of an offence if he keeps or transports, sells or exchanges or offers for sale or exchange any live or dead plant, or part of a plant which has been taken in the wild, and which is of a species or sub-species listed in the Habitats Directive Annex II(b) (other than any bryophyte), or Annex IV(b), and any part of, or anything derived from, such a plant or such a part of a plant: see the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 43. A person found guilty of an offence under reg 43 is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine: reg 43. As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

26 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, regs 44-47 (amended by SI 2009/7). Subject to reg 49(11) (licensing), a person on an offshore marine installation commits an offence if he deliberately introduces into any relevant part of the waters in any area designated under the Continental Shelf Act 1964 s 1(7) (see **FUEL AND ENERGY** vol 19(3) (2007 Reissue) PARA 1636) any live animal or plant of a kind having a natural range that does not include those waters: see the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 48(1)(a). For similar provision made by the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, see PARAS 738, 740, 743.

27 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, Pt 5 (regs 49-51). For similar provision made by the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, see PARA 744.

28 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, regs 52-62. Such wildlife officers have powers to board and inspect certain ships and offshore marine installations, and

enter and inspect any other premises, subject to specified conditions, for ascertaining whether an offence has been committed: see reg 53. Where a wildlife officer has used his powers under reg 53, he may: (1) make an inquiry of any person or examine anything on board the ship or offshore marine installation or at the premises (see reg 55(1)); (2) require any person on board the ship or offshore marine installation or at the premises to do anything which appears to the wildlife officer to be necessary for facilitating his examination of anything (see reg 55(2)); (3) for the purposes of ascertaining whether an offence has been or is being committed, require any person on board the ship or offshore marine installation or at the premises who has a specimen to make it available to the wildlife officer (see reg 56(1)); (4) take a sample from any specimen he finds on the ship or offshore marine installation or premises for the purpose of establishing its identity or ancestry (see reg 56(2), (3)); (5) take and remove from the ship, offshore marine installation or premises any document or specimen which is not a live bird, other animal or plant if there are reasonable grounds for believing it is evidence of an offence (see reg 56(4)); (6) for the purpose of ascertaining whether an offence has been or is being committed, require any person on board the ship or offshore marine installation or at the premises to produce any document which is in his possession or control, and take copies of it (see reg 57(1)); (7) take and remove from the ship, offshore marine installation or premises any document which is not required by law to be carried on the ship, offshore marine installation or premises, if there are reasonable grounds for believing it is evidence of an offence (see reg 57(2), (3)); and (8) use any device for the purpose of taking visual images or sound recordings of anything which he believes is evidence of an offence (see reg 57(4)). Wildlife officers may require a ship to stop or do anything that facilitates boarding a ship, require the master or other person in charge of the ship to take it and its crew to the nearest port, or detain the ship in port: see reg 58. A wildlife officer may take any other person or any equipment or materials to assist him in performing his functions (see reg 59) and the wildlife officer or the person assisting him may use reasonable force in the performing of his functions (see reg 60). A wildlife officer or any person assisting him is not to be personally liable in any civil or criminal proceedings for anything done in the purported exercise of his functions if the court is satisfied that the act was done in good faith and there were reasonable grounds for doing it: reg 61. Provision is also made as to offences in relation to obstructing, assaulting a wildlife officer in the exercise of his functions, failing to or preventing any other person from complying with a requirement, or giving information which is knowingly false: see reg 62. For similar provision in relation to wildlife inspectors see PARA 747.

29 See the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, regs 67-74.

UPDATE

736 Offshore marine area

TEXT AND NOTES--As to the power of marine enforcement officers to enforce nature conservation legislation see Marine and Coastal Access Act 2009 s 237(1), (2); and WATER AND WATERWAYS vol 100 (2009) PARA 30F.3.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(8) HABITAT AND BIODIVERSITY/(i) Conservation of Habitats etc under the Habitats Directive/737. Nature conservation policy in planning context.

737. Nature conservation policy in planning context.

For the purposes of planning legislation¹, policies in respect of the conservation of the natural beauty and amenity of the land² must be taken to include policies encouraging the management of features of the landscape which are of major importance for wild flora and fauna³. Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems of marking field boundaries) or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species⁴.

In certain circumstances Natural England or the Countryside Council for Wales⁵ must be consulted on a planning application⁶ and its views will be taken into account by the courts on an application for judicial review⁷.

1 le the Town and Country Planning Act 1990 s 12(3A) (repealed with savings) (unitary development plans: see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 158), s 31(3) (structure plans: see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 183) and s 36(3) (local plans: see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 195): Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37(2).

2 As to the meaning of 'land' see PARA 761 note 2.

3 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37(1).

4 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37(1). Where the Secretary of State considers it necessary, the Secretary of State must include in a national policy statement under the Planning Act 2008 Pt 2 (ss 5-13) (see **TOWN AND COUNTRY PLANNING**) policy that encourages the management of such features of the landscape (as mentioned in the text) which are of major importance for wild flora and fauna: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37(3) (added by SI 2009/2438). As to planning considerations see further PARA 749 et seq.

5 As to Natural England and the Countryside Council for Wales see PARAS 523-524.

6 See **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 70.

7 See eg *R (on the application of Helford Village Development Co Ltd) v Kerrier District Council* [2009] EWHC 400 (Admin), [2009] All ER (D) 90 (Mar).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(8) HABITAT AND BIODIVERSITY/(i) Conservation of Habitats etc under the Habitats Directive/738. Conservation status of habitats and species.

738. Conservation status of habitats and species.

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales¹, must make arrangements² for the surveillance of the conservation status of natural habitats of European Community interest and species of Community interest, and in particular priority natural habitat types and priority species³.

The Secretary of State must, from time to time:

- 383 (1) consult the Welsh Ministers about the arrangements he has made⁴;
- 384 (2) provide the Welsh Ministers with such information as he considers appropriate that has been derived from the surveillance arranged by him⁵; and
- 385 (3) review the arrangements he has made and, if he thinks it appropriate, revise those arrangements⁶.

The Welsh Ministers must, from time to time:

- 386 (a) consult the Secretary of State about the arrangements they have made⁷;
- 387 (b) provide the Secretary of State with such information as they consider appropriate that has been derived from the surveillance arranged by them⁸; and
- 388 (c) review the arrangements they have made and, if they think it appropriate, revise those arrangements⁹.

The appropriate nature conservation body¹⁰ must:

- 389 (i) assess how and to what extent surveillance of the conservation status of each relevant habitat and species¹¹ needs to be carried out, having regard to:
 - 15 19. (A) whether a habitat or species is a priority natural habitat type or priority species¹²; and
 - 20. (B) the conservation status of the habitat or species¹³; and
- 16 390 (ii) advise the Secretary of State or the Welsh Ministers as to the need for such surveillance¹⁴.

The same land can comprise both a site of special scientific interest¹⁵ and a special protection area under European legislation¹⁶.

1 As to the Secretary of State and the Welsh Ministers see PARA 519.

2 I.e. arrangements in accordance with the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37A(3A)-(3C) (see the text and notes 3, 10-14).

3 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37A(1) (reg 37A added by SI 2007/1843; and the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37A(1) amended by SI 2009/6). See *R (on the application of Brown) v Secretary of State for Transport* [2004] EWHC 819 (Admin), [2004] Env LR 2, [2004] 1 P & CR 21.

The Secretary of State or the Welsh Ministers must ensure that the necessary surveillance is carried out on an ongoing basis: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37A(3B) (reg 37B(3A)-(3D) added by SI 2009/6). Surveillance for these purposes may be carried out by a nature conservation body, or any other person acting pursuant to, and in accordance with, an agreement with the Secretary of State, the Welsh Ministers or a nature conservation body: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37A(3C) (as so added). As to the meaning of 'nature conservation body' see PARA 728 note 5.

4 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37A(2)(a), (4) (as added: see note 3).

5 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37A(2)(b), (4) (as added: see note 3).

6 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37A(2)(c) (as added: see note 3).

7 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37A(3)(a) (as added: see note 3).

8 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37A(3)(b) (as added: see note 3).

9 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37A(3)(c) (as added: see note 3).

10 As to the meaning of 'appropriate nature conservation body' see PARA 728 note 5.

11 'Relevant habitat and species' means one referred to in the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37A(1) (see the text and notes 1-3): reg 37A(3D) (as added: see note 3).

12 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37A(3A)(a)(i) (as added: see note 3).

13 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37A(3A)(a)(ii) (as added: see note 3).

14 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37A(3A)(b) (as added: see note 3).

15 As to sites of special scientific interest see PARA 674 et seq.

16 See *R (on the application of Fisher) v English Nature* [2004] EWCA Civ 663, [2004] 4 All ER 861. The text refers to special protection areas under the Wild Birds Directive. As to the Wild Birds Directive see PARA 728 note 3.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(8) HABITAT AND BIODIVERSITY/(i) Conservation of Habitats etc under the Habitats Directive/739. Protection of animals.

739. Protection of animals.

It is an offence to deliberately:

- 391 (1) capture or kill a wild animal of a European protected species¹;
- 392 (2) disturb a wild animal of a European protected species²;
- 393 (3) take or destroy the eggs of a wild animal of a European protected species³; or
- 394 (4) damage or destroy a breeding site of a wild animal of a European protected species⁴.

In proceedings under head (2) or (4) the court must take into account any relevant guidance⁵.

It is an offence to:

- 395 (a) have in possession or control⁶;
- 396 (b) transport⁷;
- 397 (c) sell or exchange⁸; or
- 398 (d) offer for sale or exchange⁹,

any live or dead wild animal of a European protected species or any part of, or anything derived from, such an animal¹⁰. However, a person is not guilty of this offence if he shows that the animal or part of the animal in question, or the animal from which the part or the thing in question is derived, was lawfully taken from the wild¹¹, or of a specified species¹².

A person is not guilty of an offence under head (1) of deliberately capturing a wild animal of a European protected species, or an offence under head (a) or (b) if he shows that the act in question was in relation to an animal that had been disabled otherwise than by his unlawful act, and was done solely for one or both of the purposes of tending it and releasing it when no longer disabled, or releasing it after it had been tended¹³.

A person is not guilty of an offence under head (1), (a) or (b) if he shows that the act in question was in relation to an animal that had been seriously disabled otherwise than by his unlawful act and that there was no reasonable chance of its recovering, and was done solely for one or both of the purposes of ending the animal's life, or disposing of it (otherwise than by sale or exchange) as soon as practicable after it was dead¹⁴.

A person is not guilty of an offence under heads (1) to (4) of deliberately injuring a wild animal of a European protected species if he shows that this was done solely for the purpose of taking a sample¹⁵.

A person is not guilty of an offence under head (a) or (b) if he shows that the act in question was done solely for one or more of the purposes of:

- 399 (i) investigating whether certain offences are being or have been committed (wherever the offence was committed)¹⁶;
- 400 (ii) bringing, conducting, or giving evidence in, any criminal proceedings in respect of any such offence¹⁷; or
- 401 (iii) giving effect to specified orders¹⁸.

The above defences¹⁹ do not apply where the prosecution show that the defendant's action did not satisfy the condition that there was no satisfactory alternative and that the action was not detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range²⁰.

It is an offence to use certain methods for the purpose of capturing or killing²¹ a wild animal of certain species²².

1 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39(1)(a) (reg 39 substituted by SI 2007/1843). The Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39(1) applies to all stages of the life of the animals to which it applies: reg 39(4) (as so substituted). Unless the contrary is shown, in any proceedings for an offence under reg 39(1) the animal in question is to be presumed to have been a wild animal: reg 39(9) (as so substituted). The European protected species are set out in Sch 2 (amended by SI 2008/2172).

A person guilty of an offence under reg 39(1) is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both: reg 39(11) (as so substituted). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

As to restrictions on hunting under the Hunting Act 2004 see **ANIMALS** vol 2 (2008) PARA 1032 et seq. As to the protection of wild animals generally see **ANIMALS** vol 2 (2008) PARA 973 et seq.

2 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39(1)(b) (as substituted (see note 1); and amended by SI 2009/6). For these purposes, 'disturb' includes any disturbance which is likely: (1) to impair their ability to survive, to breed or reproduce, or to rear or nurture their young, or in the case of animals of a hibernating or migratory species, to hibernate or migrate; or (2) to affect significantly the local distribution or abundance of the species to which they belong: reg 39(1A) (added by SI 2009/6). As to the penalties see note 1.

3 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39(1)(c) (as substituted: see note 1). As to the penalties see note 1.

4 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39(1)(d) (as substituted: see note 1). As to the meaning of 'destroy' in relation to an egg see PARA 732 note 3. Summary proceedings for the offence involving the taking or killing of a wild animal may be brought within six months from the date on which evidence sufficient in the prosecutor's opinion to warrant the proceedings came to his knowledge, but no more than two years after the commission of the offence: see reg 102(2), (3); and PARA 745. As to the penalties see note 1.

5 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39(13) (substituted by SI 2009/6). Guidance as to the application of the offences in the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39(1)(b) or (d) (see heads (2), (4) in the text) in relation to particular species of animals or particular activities may be published by the Secretary of State (in relation to England) or the Welsh Ministers (in relation to Wales); or by the appropriate nature conservation body, with the approval of the Secretary of State (in relation to England) or the Welsh Ministers (in relation to Wales): reg 39(12) (substituted by SI 2009/6).

6 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39(2)(a) (as substituted: see note 1). Regulation 39(2) applies to: (1) any live or dead animal or part of an animal which has been taken from the wild, and which is of a species or sub-species listed in the Habitats Directive Annex IV(a) (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39(3) (as so substituted)); and (2) all stages of the life of the animals to which it applies (reg 39(4) (as so substituted)). As to the Habitats Directive see PARA 728 note 3. In any proceedings for an offence under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39(2), where it is alleged that an animal or a part of an animal was taken from the wild, it is to be presumed, unless the contrary is shown, that that animal or part of an animal was taken from the wild: reg 39(10) (as so substituted).

A person guilty of an offence under reg 39(2) is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both: reg 39(11) (as so substituted).

7 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39(2)(b) (as substituted: see note 1). See note 6.

8 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39(2)(c) (as substituted: see note 1). See note 6.

9 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39(2)(d) (as substituted: see note 1). See note 6.

10 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39(2) (as substituted: see note 1). See note 6.

11 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39(5) (as substituted: see note 1). However, this defence does not apply where (1) in respect of the offences in reg 39(2)(a) and (b) (see heads (a), (b) in the text) if (a) the animal in question is an animal of a European protected species or of the species *Gortyna borelii lunata* (Fisher's estuarine moth), *Lacerta vivipara pannonica* (viviparous lizard) or *Lycaena dispar* (the large copper butterfly), or the part or thing in question is derived from such an animal; and (b) the animal, part or thing in question was in the defendant's possession, or transported by the defendant, for the purpose of sale or exchange (reg 39(6)(a) (as so substituted; and amended by SI 2008/2172; SI 2009/6)); or (2) in respect of the offences in the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39(2) (c), (d) (see heads (c), (d) in the text), if the animal is an animal of any of the species referred to in head (1), or the part or thing in question is derived from such an animal (reg 39(6)(b) (as so substituted)). For these purposes, an animal or part of an animal is 'lawfully' taken from the wild if it was taken from the wild in the European territory of a member state, being territory to which the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') applies, without contravention of the law of that member state and before the implementation date, or if it was taken from the wild elsewhere: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39(7) (as so substituted).

12 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39(8) (as substituted: see note 1). As to the species specified see reg 39(8) (as so substituted), Sch 2A (added by SI 2007/1843).

13 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 40(1) (reg 40 substituted by SI 2007/1843).

14 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 40(2) (as substituted: see note 13).

15 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 40(3) (as substituted: see note 13). The sample referred to in the text must be taken:

130 (1) by virtue of the Wildlife and Countryside Act 1981 s 18C, s 18E or s 19XA (see **ANIMALS** vol 2 (2008) PARAS 1011-1012), the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101A or reg 101E (see PARAS 746-747), or the Offshore Marine Conservation (Natural Habitats etc) Regulations 2007, SI 2007/1842, reg 56(2) (see PARA 736) (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 40(3)(a)); or

131 (2) for the purposes of taking a sample to be used in evidence in any criminal proceedings in respect of the following offences (wherever the offence was committed): an offence under the Wildlife and Countryside Act 1981 s 9, s 11, or s 17, or an offence under s 18 relating to an offence under s 9 or s 11; an offence under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39, reg 41 or reg 46, or an offence under reg 100 which relates to an offence under reg 39 or reg 41; an offence under the Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, or an offence of attempting to commit such an offence; or an offence under the Offshore Marine Conservation (Natural Habitats etc) Regulations 2007, SI 2007/1842, reg 39, reg 41 or reg 51, an offence of attempting to commit an offence under reg 39 or reg 41, or an offence under reg 64 which relates to an offence under reg 39 or reg 41 (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 40(3)(b)).

16 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 40(4)(a) (as substituted: see note 13). As to the specified offences see note 15 head (2).

17 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 40(4)(b) (as substituted: see note 13).

18 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 40(4)(c) (as substituted: see note 13). The specified orders are those under the Wildlife and Countryside Act 1981 s 21(6), the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 103 and the Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 11: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 40(4)(c).

19 The defences under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 40(1)-(4) (see the text and notes 13-18).

20 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 40(4A), (4B) (added by SI 2009/6).

21 The prohibited means of capturing or killing mammals are:

- 132 (1) blind or mutilated animals used as live decoys (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41(3)(a) (reg 41(3) amended by SI 2007/1843));
- 133 (2) tape recorders (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41(3)(b) (as so amended));
- 134 (3) electrical and electronic devices capable of killing or stunning (reg 41(3)(c) (as so amended));
- 135 (4) artificial light sources (reg 41(3)(d) (as so amended));
- 136 (5) mirrors and other dazzling devices (reg 41(3)(e) (as so amended));
- 137 (6) devices for illuminating targets (reg 41(3)(f) (as so amended));
- 138 (7) sighting devices for night shooting comprising an electronic image magnifier or image converter (reg 41(3)(g) (as so amended));
- 139 (8) explosives (reg 41(3)(h) (as so amended));
- 140 (9) nets which are non-selective according to their principle or their conditions of use (reg 41(3)(i) (as so amended));
- 141 (10) traps which are non-selective according to their principle or their conditions of use (reg 41(3)(j) (as so amended));
- 142 (11) crossbows (reg 41(3)(k) (as so amended));
- 143 (12) poisons and poisoned or anaesthetic bait (reg 41(3)(l) (as so amended));
- 144 (13) gassing or smoking out (reg 41(3)(m) (as so amended));
- 145 (14) semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition (reg 41(3)(n) (as so amended)).

The prohibited means of capturing or killing fish are poison and explosives: reg 41(4) (amended by SI 2007/1843). The prohibited modes of transport are aircraft and moving motor vehicles: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41(5).

22 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41(1), (2), Sch 3 (reg 41(1), (2) amended by SI 2007/1843). Such an offence is punishable on summary conviction by imprisonment for a term not exceeding six months or by a fine not exceeding level 5 on the standard scale, or by both: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41(6) (amended by SI 2007/1843).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(8) HABITAT AND BIODIVERSITY/(i) Conservation of Habitats etc under the Habitats Directive/740. Monitoring of incidental capture and killing.

740. Monitoring of incidental capture and killing.

The Secretary of State, in relation England, and the Welsh Ministers, in relation to Wales¹, must make arrangements to establish a system to monitor the incidental capture of animals of the listed species², and the incidental killing of such animals, which takes place in England or Wales³.

The Secretary of State must from time to time:

- 402 (1) consult the Welsh Ministers about the arrangements he has made⁴;
- 403 (2) provide the Welsh Ministers with such information as he considers appropriate derived from the monitoring arranged by him⁵; and
- 404 (3) review the arrangements he has made and, if he thinks it appropriate, revise those arrangements⁶.

The Welsh Ministers must from time to time:

- 405 (a) consult the Secretary of State about the arrangements they have made⁷;
- 406 (b) provide the Secretary of State with such information as they consider appropriate derived from the monitoring arranged by them⁸; and
- 407 (c) review the arrangements they have made and, if they think it appropriate, revise those arrangements⁹.

The appropriate nature conservation body¹⁰ must, in relation to the listed species of animals¹¹ which are found in England or in Wales (as the case may be):

- 408 (i) identify the risks of incidental capture and killing to which those species are subject, and the activities which give rise to such risks¹²;
- 409 (ii) maintain a record of instances of incidental capture or killing of animals of those species of which the nature conservation body¹³ is aware as a result of the surveillance carried out, the monitoring carried out, or otherwise¹⁴;
- 410 (iii) assess to what extent monitoring of incidental capture and killing is needed, having regard to:

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- 21. (A) the risks identified under head (i)¹⁵;
- 22. (B) the instances of incidental capture or killing recorded under head (ii)¹⁶;
- 23. (C) whether the species is a priority species¹⁷; and
- 24. (D) the conservation status of the species¹⁸; and

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- 411 (iv) advise the Secretary of State or the Welsh Ministers as to the need for such monitoring¹⁹.

The Secretary of State or the Welsh Ministers must ensure that the necessary monitoring²⁰ of incidental capture and killing is carried out²¹.

The Secretary of State or the Welsh Ministers must, as required in the light of information derived from monitoring²², make arrangements for further research for, or ensure that conservation measures are taken for, the purpose of ensuring that any incidental capture or incidental killing of animals of a listed species which takes place in England or Wales does not have a significant negative impact on that species²³.

- 1 As to the Secretary of State and the Welsh Ministers see PARA 519.
- 2 I.e. animals of the species listed in the Habitats Directive Annex IV(a). As to the Habitats Directive see PARA 728 note 3.
- 3 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41A(1), (3) (reg 41A added by SI 2007/1843; and Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41A(1), (3) amended by SI 2009/6).
- 4 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41A(2)(a) (as added: see note 3).
- 5 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41A(2)(b) (as added: see note 3).
- 6 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41A(2)(c) (as added: see note 3).
- 7 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41A(4)(a) (as added: see note 3).
- 8 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41A(4)(b) (as added: see note 3).
- 9 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41A(4)(c) (as added: see note 3).
- 10 As to the meaning of 'appropriate nature conservation body' see PARA 728 note 5.
- 11 I.e. animals of the species listed in the Habitats Directive Annex IV(a).
- 12 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41A(4A)(a) (reg 41A(4a), (4B) added by SI 2009/6).
- 13 As to the meaning of 'nature conservation body' see PARA 728 note 5.
- 14 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41A(4A)(b) (as added: see note 12).
- 15 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41A(4A)(c)(i) (as added: see note 12).
- 16 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41A(4A)(c)(ii) (as added: see note 12).
- 17 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41A(4A)(c)(iii) (as added: see note 12).
- 18 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41A(4A)(c)(iv) (as added: see note 12).
- 19 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41A(4A)(d) (as added: see note 12).
- 20 For these purposes, 'monitoring' may be carried out by: (1) a nature conservation body; (2) any other competent authority; (3) any other person acting pursuant to, and in accordance with: (a) an agreement with the Secretary of State, the Welsh Ministers or a nature conservation body; or (b) a condition of a licence or other authorisation granted by a competent authority: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41A(4C) (as added: see note 12). As to the meaning of 'competent authority' see PARA 728 note 11.
- 21 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41A(4B) (as added: see note 12).
- 22 I.e. monitoring arranged under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41A or otherwise arranged for the purposes of the Habitats Directive art 12(4): Conservation (Natural

Habitats etc) Regulations 1994, SI 1994/2716, reg 41B(1), (3) (reg 41B added by SI 2007/1438; and the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41B(1), (3) substituted by SI 2009/6).

23 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 41B(1)-(4) (as added and substituted: see note 22).

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741. Protection of plants.

It is an offence to deliberately pick, collect, cut, uproot or destroy a wild plant of a European protected species¹. However, a person is not guilty of such an offence if he shows that the act was for the purpose of taking a sample².

It is also an offence for any person:

- 412 (1) to have in his possession or control certain wild plants³;
- 413 (2) to transport any such wild plant⁴;
- 414 (3) to sell or exchange any such wild plant⁵; or
- 415 (4) to offer for sale or exchange any such wild plant⁶.

A person is not guilty of an offence under head (1) or (2) if he shows that the act in question was done solely for one or more of the purposes of: (a) investigating whether certain offences are being or have been committed (wherever the offence was committed)⁷; (b) bringing, conducting, or giving evidence in, any criminal proceedings in respect of any such offence⁸; or (c) giving effect to specified orders⁹. A person is not guilty of an offence under heads (1) to (4) if he shows that the plant or part of the plant in question, or the plant or part of the plant from which the part or thing in question is derived, was lawfully taken in the wild¹⁰.

1 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 43(1) (reg 43 substituted by SI 2007/1843). This applies regardless of the stage of the biological cycle of the plant in question: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 43(4) (as so substituted). Unless the contrary is shown, in any proceedings for an offence under reg 43(1), the plant in question is to be presumed to have been a wild plant: reg 43(10) (as so substituted). The European protected species are set out in reg 42, Sch 4. Summary proceedings for this offence may be brought within six months from the date on which evidence sufficient in the prosecutor's opinion to warrant the proceedings came to his knowledge, but no more than two years after the commission of the offence: see reg 102(2), (3); and PARA 739.

A person guilty of an offence under reg 43(1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 43(12) (as so substituted). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

As to restrictions on the sale and disturbance of wild plants under the Wildlife and Countryside Act 1981 see PARA 712. As to the protection of endangered species see PARA 716 et seq.

2 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 43(5) (as substituted: see note 1). The sample referred to in the text must be taken:

- 146 (1) by virtue of the Wildlife and Countryside Act 1981 s 18C, s 18E or s 19XA (see **ANIMALS** vol 2 (2008) PARAS 1011-1012), the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101A or reg 101E, or the Offshore Marine Conservation (Natural Habitats etc) Regulations 2007, SI 2007/1842, reg 56(2) (see PARA 736) (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 43(5)(a)); or
- 147 (2) for the purposes of taking a sample to be used in evidence in any criminal proceedings in respect of the following offences (wherever the offence was committed): an offence under the Wildlife and Countryside Act 1981 s 9, s 11, or s 17, or an offence under s 18, relating to an offence under s 9 or s 11, an offence under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39, reg 41 or reg 46 or an offence under reg 100, which relates to an offence under reg 39 or reg 41; an offence under the Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, or an offence of attempting to commit such an offence; or an offence under the Offshore Marine Conservation (Natural Habitats etc) Regulations 2007, SI 2007/1842, reg 39, reg 41 or reg 51, an offence of attempting to commit an offence

under reg 39 or reg 41; or an offence under reg 64 which relates to an offence under reg 39 or reg 41 (reg 43(5)(b)).

3 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 43(2)(a) (as substituted: see note 1). The text refers to: (1) any live or dead plant, or part of a plant, which has been taken in the wild and which is of a species or sub-species listed in Annex II(b) (other than any bryophyte) or Annex IV(b) to the Habitats Directive; and (2) any part of, or anything derived from, such a plant or such a part of a plant: see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 43(3) (as so substituted). Regulation 43(2) applies regardless of the stage of the biological cycle of the plant in question: reg 43(4) (as so substituted). Unless the contrary is shown, where in any proceedings for an offence under reg 43(2) it is alleged that the plant or a part of the plant in question was taken in the wild it is to be presumed to have been taken in the wild: reg 43(11) (as so substituted).

A person guilty of an offence under reg 43(2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 43(12) (as so substituted).

4 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 43(2)(b) (as substituted: see note 1). See note 3.

5 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 43(2)(c) (as substituted: see note 1). See note 3.

6 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 43(2)(d) (as substituted: see note 1). See note 3.

7 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 43(6)(a) (as substituted: see note 1). As to the criminal offences see note 2 head (2).

8 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 43(6)(b) (as substituted: see note 1).

9 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 43(6)(c) (as substituted: see note 1). The specified orders are those under the Wildlife and Countryside Act 1981 s 21(6) (see **ANIMALS** vol 2 (2008) PARA 1013), the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 103 (see PARA 745) and the Control of Trade in Endangered Species (Enforcement) Regulations 1997, SI 1997/1372, reg 11 (see **ANIMALS** vol 2 (2008) PARA 965): Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 40(4)(c).

10 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 43(7) (as substituted: see note 1). This does not apply: (1) in the case of offences under heads (1) and (2) in the text if the plant in question is of a European protected species, or the part or thing in question is derived from such a plant; and the plant, part or thing in question was in the defendant's possession or control, or transported by the defendant, for the purpose of sale or exchange; or (2) in the case of the offences under heads (3) and (4) in the text, if the plant in question is of a European protected species, or the part or thing in question is derived from such a plant: reg 43(8) (as so substituted). A plant, or part of a plant, is to be treated as having been lawfully taken in the wild if it was taken in the wild in the European territory of a member state, being territory to which the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') applies, without contravention of the law of that member state and before the implementation date, or if it was taken in the wild elsewhere: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 43(9).

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742. Protection of certain animals and plants from exploitation.

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales¹, must, as required in the light of information derived from surveillance², ensure that measures are taken³ so as to ensure that the taking in the wild of specimens of a listed species⁴, and the exploitation of such specimens, are compatible with the maintenance of that species at a favourable conservation status⁵.

Where measures are required, the Secretary of State or the Welsh Ministers must make arrangements for surveillance for the purpose of establishing whether the taking in the wild of specimens of the species concerned, and the exploitation of specimens of that species, are compatible with the maintenance of that species at a favourable conservation status⁶.

1 As to the Secretary of State and the Welsh Ministers see PARA 519.

2 I.e surveillance arranged under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37A (see PARA 738) or the Habitats Directive art 11. As to the Habitats Directive see PARA 728 note 3.

3 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37B(1), (4) (reg 37B added by SI 2007/1843; and the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37B(1), (4) substituted by SI 2009/6).

4 I.e a species listed in the Habitats Directive Annex V.

5 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37B(2), (5) (as added see note 3).

6 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37B(3), (6) (as added see note 3).

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743. Introduction of new species from ships.

It is an offence for any person on board a ship¹ in any relevant part² of the coastal sea³ deliberately to introduce⁴ into those waters any live animal or plant of a kind having a natural range that does not include any area in Great Britain⁵. The Secretary of State, in relation to England, or the Welsh Ministers, in relation to Wales⁶, may issue guidance about steps which may be taken to avoid committing such an offence⁷. In any proceedings for such an offence where the offence is alleged to have been committed in England, the court must have regard to any guidance issued by the Secretary of State; and where the offence is alleged to have been committed in Wales, the court must have regard to any guidance issued by the Welsh Ministers⁸.

However, these provisions do not apply to anything which is done under and in accordance with the terms of a licence⁹ granted by the Secretary of State or the Welsh Ministers¹⁰. A licence:

- 416 (1) may be, to any degree, general or specific¹¹;
- 417 (2) may be subject to compliance with any specified conditions¹²;
- 418 (3) may be granted either to persons of a class or to a particular person¹³;
- 419 (4) may be modified or revoked at any time by the Secretary of State (if it was granted by him) or by the Welsh Ministers (if it was granted by them)¹⁴; and
- 420 (5) is valid for the period stated in the licence¹⁵.

The Secretary of State and the Welsh Ministers must not grant a licence unless they are satisfied that the action authorised by the licence will not prejudice natural habitats within their natural range or wild native flora and fauna¹⁶. The Secretary of State or the Welsh Ministers may charge for a licence such reasonable sum as he or they may determine¹⁷.

A person commits an offence if, for the purposes of obtaining, whether for himself or another, the grant of a licence¹⁸, he:

- 421 (a) makes a statement or representation, or furnishes a document or information, which he knows to be false in a material particular¹⁹; or
- 422 (b) recklessly makes a statement or representation, or furnishes a document or information, which is false in a material particular²⁰.

1 'Ship' means any vessel (including hovercraft, submersible craft and other floating craft) other than one which permanently rests on, or is permanently attached to, the seabed: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37C(10) (reg 37C added by SI 2007/1843).

2 'Relevant part' means any part where the introduction would give rise to a risk of prejudice to natural habitats within their natural range or a risk of prejudice to wild native flora or fauna (whether in the place of introduction or elsewhere): Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37C(2) (as added: see note 1).

3 'Coastal sea' means any part of the sea within the seawards limits of the territorial waters of the United Kingdom adjacent to England or Wales; and 'sea' includes any area submerged at mean high water springs and also includes, so far as the tide flows at mean high water springs, an estuary or arm of the sea and the waters

of any channel, creek, bay or river: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37C(10) (as added: see note 1). As to the meaning of 'United Kingdom' see PARA 525 note 14.

4 le other than in accordance with the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37C(3). An introduction is in accordance with reg 37C(3) if: (1) it resulted from a discharge of water carried as ballast and the discharge was necessary for the purpose of protecting the safety of any person or ship (reg 37C(3)(a) (as added: see note 1)); and (2) all reasonably practicable steps were taken: (a) to avoid its occurring in an area where it would give rise to a risk of prejudice to natural habitats within their natural range or a risk of prejudice to wild native flora or fauna (whether in the place of introduction or elsewhere) (reg 37C(3)(b)(i) (as so added)); and (b) to minimise any risk of such prejudice (reg 37C(3)(b)(ii) (as so added)).

5 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37C(1) (as added: see note 1). In any proceedings for an offence under reg 37C, it is for the defendant to show that the introduction in question was in accordance with reg 37C(3) (see note 4): reg 37C(4) (as so added). A person guilty of an offence under reg 37C is liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine: reg 37C(7) (as so added). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

Regulations 101 and 102(1) (see PARAS 745-746) apply in relation to an offence under reg 37C as if the references in those regulations to an offence under Pt III (regs 38-46A) included a reference to an offence under reg 37C: reg 37C(8) (as so added). The Wildlife and Countryside Act 1981 s 14 (see **ANIMALS** vol 2 (2008) PARA 1024) does not apply in relation to any act which is an offence under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37C: reg 37C(8) (as so added).

6 As to the Secretary of State and the Welsh Ministers see PARA 519.

7 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37C(5) (as added: see note 1).

8 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37C(6) (as added: see note 1).

9 le a licence under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37D.

10 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37D(1) (reg 37D added by SI 2007/1843).

11 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37D(3)(a) (as added: see note 10).

12 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37D(3)(b) (as added: see note 10).

13 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37D(3)(c) (as added: see note 10). For the purposes of a licence under reg 37D the definition of a class of persons may be framed by reference to any circumstances whatever including, in particular, their being authorised by any other person: reg 37D(4) (as so added).

14 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37D(3)(d) (as added: see note 10).

15 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37D(3)(e) (as added: see note 10).

16 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37D(2) (as added: see note 10).

17 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37D(5) (as added: see note 10).

18 le a licence under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37D.

19 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37E(1)(a) (reg 37E added by SI 2007/1843). A person guilty of an offence under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37E is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both: reg 37E(2). Regulations 101 and 102(1) (see PARAS 745-746) apply in relation to an offence under reg 37E as if the references in those regulations to an offence under Pt III included a reference to an offence under reg 37E: reg 37E(3) (as so added).

20 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 37E(1)(b). See note 19.

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744. Power to grant licences.

A licence may be granted by the appropriate authority¹ exempting from liability things done for the following purposes²:

- 423 (1) scientific or educational purposes³;
- 424 (2) ringing or marking, or examining any ring or mark on, wild animals⁴;
- 425 (3) conserving wild animals or wild plants or introducing them to particular areas⁵;
- 426 (4) protecting any zoological or botanical collection⁶;
- 427 (5) preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment⁷;
- 428 (6) preventing the spread of disease⁸; or
- 429 (7) preventing serious damage to livestock⁹, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries¹⁰.

The appropriate authority may grant a licence to permit the taking or the possession or control of certain specimens of any of the listed species or sub-species¹¹ notwithstanding that the licence is for a purpose not falling within heads (1) to (7)¹².

The appropriate authority must not grant a licence unless it is satisfied that there is no satisfactory alternative, and that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range¹³. The Secretary of State must from time to time consult with Natural England¹⁴ as to the exercise of his functions¹⁵; and he must not grant a licence of any description unless he has been advised as to the circumstances in which, in its opinion, licences of that description should be granted¹⁶. The Welsh Ministers must from time to time consult with the Countryside Council for Wales¹⁷ as to the exercise of their functions¹⁸; and they must not grant a licence of any description unless they have been advised as to the circumstances in which, in its opinion, licences of that description should be granted¹⁹.

It is an offence to make a false statement for the purposes of obtaining a licence²⁰.

It is an offence for any person authorised by virtue of a licence²¹ to contravene or fail to comply with any condition which the licence requires him to comply with²².

1 'Appropriate authority' means: (1) in the case of a licence under any of heads (1)-(4) in the text, the appropriate nature conservation body; (2) in the case of a licence under any of heads (5)-(7) in the text, the Secretary of State, in relation to England, and the Welsh Ministers in relation to Wales; and (3) in the case of a licence under reg 44(2A) (see the text and notes 11-12), the Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 44(4) (amended by SI 2007/1843; SI 2009/6). As to the meaning of 'appropriate nature conservation body' see PARA 728 note 5; and as to the Secretary of State and the Welsh Ministers see PARA 519.

2 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 44(1). As to supplementary provisions relating to licences see reg 45 (amended by SI 2007/1843).

3 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 44(2)(a).

4 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 44(2)(b).

- 5 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 44(2)(c).
- 6 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 44(2)(d).
- 7 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 44(2)(e). This provision does not cover the preservation of a species: *R (on the application of Newsum) v Welsh Assembly* [2004] EWCA Civ 1565, [2004] 49 EG 134 (CS), (2004) Times, 7 December.
- 8 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 44(2)(f).
- 9 'Livestock' includes any animal which is kept: (1) for the provision of food, skins, fur; (2) for the purpose of its use in the carrying on of any agricultural activity; or (3) for the provision or improvement of shooting or fishing: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(1).
- 10 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 44(2)(g).
- 11 Ie species or sub-species listed in the Habitats Directive Annex II(b) (other than bryophyte) or Annex IV. As to the Habitats Directive see PARA 728 note 3.
- 12 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 44(2A) (reg 44(2A)-(2C) added by SI 2007/1843). The appropriate authority may only grant such a licence if it is satisfied that the grant of the licence would be consistent with the restrictions in the Habitats Directive art 16(1)(e): Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 44(2B) (as so added). Regulations 39, 41 and 43 do not apply to anything done under and in accordance with the terms of a licence granted by the appropriate authority under reg 44(2A): reg 44(2C) (as so added).
- 13 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 44(3).
- 14 As to Natural England see PARA 523.
- 15 Ie under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 44. As to the meaning of 'functions' see PARA 728 note 6.
- 16 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 44(5) (substituted by SI 2009/6).
- 17 As to the Countryside Council for Wales see PARA 524.
- 18 Ie under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 44. As to the meaning of 'functions' see PARA 728 note 6.
- 19 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 44(6) (substituted by SI 2009/6).
- 20 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 46(1). The offence is punishable on summary conviction by imprisonment for a term not exceeding six months or by a fine not exceeding level 5 on the standard scale or by both: see reg 46(2) (amended by SI 2007/1843). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.
- 21 Ie a licence granted under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 44 on or after 21 August 2007: reg 46A(2) (reg 46A added by SI 2007/1843).
- 22 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 46A(1) (as added: see note 21). However, a person is not guilty of an offence if he shows that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence, or the commission of the offence was otherwise due to matters beyond his control: reg 46A(3) (as so added). A person guilty of an offence under reg 46A(1) is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both: reg 46(4) (as so added).

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745. Offences relating to the protection of species.

A person who attempts to commit an offence under the provisions relating to the protection of species¹ or who for the purpose of committing such an offence has in his possession anything capable of being used to commit the offence is guilty of an offence and punishable in the same way as for that offence².

The court must order forfeiture of any animal, plant or other thing in respect of which the offence was committed and may order the forfeiture of any vehicle (including any aircraft, hovercraft or boat), animal, weapon or other thing which was used to commit the offence³.

An offence under the provisions relating to the protection of species⁴ is, for the purposes of conferring jurisdiction, deemed to have been committed in any place where the offender is found or to which he is first brought after the commission of the offence⁵.

Where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director⁶, manager, secretary or other similar officer of the body corporate, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly⁷.

1 le under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, Pt III (regs 38-46A).

2 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 100(1), (2).

3 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 103.

4 le under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, Pt III.

5 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 102(1). As to the time limits for bringing summary proceedings for offences under reg 39(1) or reg 43(1) see PARAS 739, 741.

6 For this purpose 'director', in relation to a body corporate whose affairs are managed by its members, means any member of the body: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 106(1).

7 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 106(1).

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746. Enforcement by constables.

If a constable suspects with reasonable cause that any person is committing or has committed an offence under the provisions relating to the protection of species¹, he may² without warrant:

- 430 (1) stop and search that person if he suspects with reasonable cause that evidence of the commission of the offence is to be found on that person³;
- 431 (2) search or examine any thing which that person may then be using or have in his possession if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that thing⁴;
- 432 (3) seize and detain for the purposes of proceedings any thing which may be evidence of the commission of the offence or may be liable to be forfeited⁵.

A constable who suspects with reasonable cause that a specimen⁶ found by him in the exercise of powers⁷ is one in respect of which an offence⁸ is being or has been committed may require a sample⁹ to be taken from the specimen¹⁰. A constable who suspects with reasonable cause that an offence¹¹ is being or has been committed in respect of any specimen (the 'relevant specimen') may require any person to make available for the taking of a sample any other specimen in that person's possession or control which is alleged to be, or the constable suspects with reasonable cause to be, a specimen, a sample from which will tend to establish the identity or ancestry of the relevant specimen¹². Where a sample from a live animal or plant is to be taken pursuant to such a requirement¹³, any person who has possession or control of the animal or plant must give the person taking the sample such assistance as he may reasonably require for that purpose¹⁴.

1 le under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, Pt III (regs 38-46A) or reg 100; reg 100(3).

2 For this purpose the constable may enter any land other than a dwelling house: see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101(2) (amended by SI 2005/3389; SI 2007/1843). When a constable is exercising the powers conferred under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101(b), (c) (see heads (2) and (3) in the text), and has entered premises under reg 101(2), he may take with him any other person and any equipment or materials: reg 101(2A) (added by SI 2007/1843). As to the meaning of 'land' see PARA 761 note 2. If a justice of the peace is satisfied by information on oath that there are reasonable grounds for suspecting that an offence under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, Pt III has been committed and that evidence of the offence may be found on any premises, he may grant a warrant to any constable (with or without other persons) to enter upon and search those premises for the purpose of obtaining that evidence: reg 101(3) (amended by SI 2007/1843).

3 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101(1)(a).

4 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101(1)(b).

5 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101(1)(c).

6 For these purposes, 'specimen' means any animal or plant, or any part of, or anything derived from, an animal or plant: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101A(5) (reg 101A added by SI 2007/1843).

7 le conferred on him by the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101.

8 le an offence under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, Pt III.

9 For these purposes, no sample may be taken by virtue of the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101A from a live animal except by a veterinary surgeon: reg 101G(1) (reg 101G added by SI 2007/1843). No sample may be taken from a live animal or plant by virtue of the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101A unless the person taking it is satisfied on reasonable grounds that taking it will not cause lasting harm to the specimen: reg 101G(2) (as so added).

10 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101A(1) (as added: see note 6).

11 le an offence under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, Pt III.

12 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101A(2) (as added: see note 6). A person commits an offence if, without reasonable excuse, he fails to make available any specimen in accordance with a requirement under reg 101A(2): reg 101B(1)(a) (reg 101B added by SI 2007/1843). A person found guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101B(2) (as so added). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

13 le a requirement under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101A.

14 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101A(3) (as added: see note 6). A person commits an offence if, without reasonable excuse, he fails to give any assistance reasonably required under reg 101A(3): reg 101B(1)(b) (as added: see note 12). A person found guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: reg 101B(2) (as so added).

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747. Enforcement by wildlife inspectors.

A wildlife inspector¹ may, at any reasonable time, enter and inspect any premises other than a dwelling for the purpose of ascertaining whether an offence² is being or has been committed; or for the purpose of verifying any statement or representation made, or document or information supplied, by an occupier of the premises in connection with an application for, or the holding of, a licence³. A wildlife inspector must not, in the exercise of this power, board or inspect a ship⁴ unless:

- 433 (1) in the case of a third country ship⁵, the United Kingdom⁶ is entitled under international law to exercise that power without the consent of the flag state⁷; or
- 434 (2) the Commissioners for Her Majesty's Revenue and Customs⁸ have given authority to exercise that power⁹.

A wildlife inspector must, if required to do so, produce evidence of his authority before entering any premises under these provisions¹⁰. A wildlife inspector entering premises under these provisions may take with him a veterinary surgeon if he has reasonable grounds for believing that such a person will be needed¹¹.

A person commits an offence if he intentionally obstructs a wildlife inspector acting in the exercise of his powers¹² or fails without reasonable excuse to give any assistance reasonably required¹³. A person also commits an offence if, with intent to deceive, he falsely pretends to be a wildlife inspector¹⁴.

Natural England, in relation to England, and the Countryside Council for Wales, in relation to Wales¹⁵, may advise or assist any constable or wildlife inspector in, or in connection with, enforcement action in relation to offences¹⁶.

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, may issue a code of practice in connection with these provisions¹⁷ and revise or replace such a code¹⁸. In discharging his functions¹⁹ a wildlife inspector authorised by the Secretary of State must have regard to any relevant provision of a code issued by the Secretary of State, and a wildlife inspector authorised by the Welsh Ministers must have regard to any relevant provision of a code issued by them²⁰. However, a wildlife inspector's failure to have regard to any provision of a code does not make him liable to criminal or civil proceedings²¹.

1 'Wildlife inspector' means a person authorised in writing under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, by the Secretary of State in relation to England, or the Welsh Ministers in relation to Wales: reg 101C(1) (reg 101C added by SI 2007/1843). Such an authorisation is subject to any conditions or limitations specified in it: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101C(2) (as so added). As to the Secretary of State and the Welsh Ministers see PARA 519.

As from 12 January 2010, marine enforcement officers are to have powers to enforce nature conservation legislation: see the Marine and Coastal Access Act 2009 s 237(1), (2); the Marine and Coastal Access Act 2009 (Commencement No 1 and Transitional Provisions) Order 2009, SI 2009/3345; and **WATER AND WATERWAYS**.

2 ie an offence under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 39 (see PARA 739), reg 41 (see PARA 739), reg 43 (see PARA 741) or reg 46A (see PARA 744).

3 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101D(1) (regs 101D-101G added by SI 2007/1843). This power includes power to board and inspect a ship within the coastal sea, subject to the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101D(3)-(6) (see the text and notes 4-9): reg 101D(2) (as so added). As to the meaning of 'coastal sea' see PARA 743 note 3. Where a wildlife inspector has entered premises for a purpose mentioned in reg 101D(1), the inspector or the veterinary surgeon accompanying him may for any such purpose examine any specimen and, subject to reg 101E(3) and reg 101G, take a sample from it: see reg 101E(1), (2) (as so added). No such sample may be taken from a live animal or plant except for the purpose of establishing its ancestry or identity: reg 101E(3) (as so added). The inspector may require an occupier of the premises to give such assistance as is reasonable in the circumstances for the purpose of making such an examination or taking such a sample: reg 101E(4) (as so added). The inspector may take and remove from the premises a specimen which is not a live animal or plant, if there are reasonable grounds for believing that it is evidence of an offence under reg 39 (see PARA 739), reg 41 (see PARA 739), reg 43 (see PARA 741) or reg 46A (see PARA 744): reg 101E(5) (as so added). For these purposes, no sample may be taken by virtue of reg 101E from a live animal except by a veterinary surgeon: reg 101G(1) (as so added). No sample may be taken from a live animal or plant by virtue of reg 101E unless the person taking it is satisfied on reasonable grounds that taking it will not cause lasting harm to the specimen: reg 101G(2) (as so added).

4 As to the meaning of 'ship' see PARA 743 note 1.

5 'Third country ship' means a ship which is: (1) flying the flag of, or is registered in, any state or territory (other than Gibraltar) which is not a member state; and (2) is not registered in a member state: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101D(9) (as added: see note 3).

6 As to the meaning of 'United Kingdom' see PARA 525 note 14.

7 'Flag state', in relation to a ship, means the state whose flag that ship is flying or is entitled to fly: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101D(1)(9) (as added: see note 3).

8 As to the Commissioners for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq.

9 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101D(4) (as added: see note 3). This applies in relation to: (1) a third country ship; (2) a warship which is being used by the government of a state other than the United Kingdom (whether or not it is a third country ship); and (3) any other ship which is being used by the government of a state other than the United Kingdom for any non-commercial purpose: reg 101D(9) (as so added). The Commissioners must not give their authority unless the flag state has consented to the United Kingdom exercising that power (whether generally or in relation to the ship in question): reg 101D(5) (as so added). In giving their authority, the Commissioners must impose such conditions or limitations on the exercise of the power as may be necessary to give effect to any conditions or limitations imposed by the flag state: reg 101D(6) (as so added).

10 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101D(7) (as added: see note 3).

11 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101D(8) (as added: see note 3).

12 The powers conferred by the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101D or reg 101E(2) or (5).

13 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101F(1) (as added: see note 3). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101F(3) (as so added). As to the standard scale see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142.

14 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101F(2) (as added: see note 3). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or on conviction on indictment to imprisonment not exceeding two years or to a fine or to both: reg 101F(4) (as so added). As to the statutory maximum see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140.

15 As to Natural England and the Countryside Council for Wales see PARAS 523-524.

16 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101I (reg 101I added by SI 2007/1843). The offences referred to in the text are those under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, Pt III (regs 38-46A).

17 The Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 101B-101G.

18 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101H(1) (reg 101H added by SI 2007/1843). Such a code is admissible in evidence in any proceedings, and must be taken into account by any court in any case in which it appears to the court to be relevant: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101H(4) (as so added).

19 le functions under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 101B-101G.

20 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101H(2) (as added: see note 18).

21 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 101H(3) (as added: see note 18).

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748. Assessment of implications for European sites.

A competent authority¹, before deciding to undertake or give consent for a plan or project which is likely to have a significant effect on a European site² in Great Britain or a European offshore marine site³ (either alone or in combination with other plans or projects) and is not directly connected with or necessary to its management, must make an assessment of the implications for the site in view of its conservation objectives⁴. The competent authority must consult the appropriate nature conservation body⁵ and also take public opinion if appropriate⁶. The competent authority must agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be)⁷. If it is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which may be of a social or economic nature), the competent authority may agree to the plan or project notwithstanding a negative assessment of the implications for the site⁸. Where the site concerned hosts a priority natural habitat type or a priority species⁹, these reasons must be either: (1) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment¹⁰; or (2) any other reasons which the competent authority, having due regard to the opinion of the European Commission, considers to be imperative reasons of overriding public interest¹¹.

Where more than one competent authority is involved in a plan or project¹², the Secretary of State or the Welsh Ministers, in determining whether the plan or project should be agreed to, must seek and have regard to the views of the other competent authority or authorities involved¹³. The Secretary of State or the Welsh Ministers may issue guidance to competent authorities as to the circumstances in which a competent authority may or should adopt the reasoning or conclusions of another competent authority as to whether a plan or project is likely to have a significant effect on, or will adversely affect, a European site or a European offshore marine site, and the competent authorities involved must have regard to any such guidance in discharging their functions¹⁴.

1 As to the meaning of 'competent authority' see PARA 728 note 11.

2 As to the meaning of 'European site' see PARA 729 note 7.

3 As to the meaning of 'European offshore marine site' see PARA 728 note 10.

4 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 48(1) (amended by SI 2007/1843). A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable it to determine whether an appropriate assessment is required: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 48(2) (amended by SI 2007/1843). Where a plan or project requires an appropriate assessment both under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 48 and under the Offshore Marine Conservation (Natural Habitats etc) Regulations 2007, SI 2007/1842, the assessment required by the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 48 need not identify those effects of the plan or project that are specifically attributable to that part of it that is to be carried out in Great Britain, provided that an assessment made for the purpose of reg 48 and the Offshore Marine Conservation (Natural Habitats etc) Regulations 2007, SI 2007/1842, assesses the effects of the plan or project as a whole: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 48(8) (added by SI 2007/1843). The Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 48 does not apply in relation to a site which is a European site by reason of reg 10(1)(c) (see PARA 729 note 7 head (5)) or a European offshore marine site by reason of the Offshore Marine Conservation (Natural Habitats etc) Regulations

2007, SI 2007/1842, reg 15(c) (see PARA 736): Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 48(7) (substituted by SI 2007/1843). As to the application of the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, Pt IV (regs 47-85) see reg 47 (amended by SI 2007/1843).

Where, before the date on which a site becomes a European site or a European offshore marine site or, if later, the commencement of the regulations (ie 30 October 1994: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 1(2)), a competent authority has decided to undertake, or has given any consent, permission or other authorisation for a plan or project to which reg 48(1) would apply if it were to be reconsidered as of that date, the competent authority must as soon as reasonably practicable review its decision or, as the case may be, the consent, permission or other authorisation, and must affirm, modify or revoke it: reg 50(1) (amended by SI 2007/1843). Provision is made for the review of existing decisions and consents and for the manner of consideration on review: see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 50(2)-(4), 51, 52(2) (amended by SI 2007/1843). The Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 50, 51 apply to planning permission, subject to certain provisions: see regs 55-57; and PARA 749.

5 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 48(3). As to the meaning of 'appropriate nature conservation body' see PARA 728 note 5.

6 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 48(4).

7 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 48(5) (amended SI 2007/1843). In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given: reg 48(6).

8 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 49(1). Where: (1) a plan or project is agreed to, notwithstanding a negative assessment of the implications for a European site or European offshore marine site; or (2) a decision, or a consent, permission or other authorisation, is affirmed on review, notwithstanding such an assessment, the Secretary of State or the Welsh Ministers must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected: reg 53 (amended by SI 2007/1843). As to the Secretary of State and the Welsh Ministers see PARA 519. As to the meaning of 'Natura 2000' see PARA 729 note 4.

9 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(2); and the Habitats Directive art 1. As to the Habitats Directive see PARA 728 note 3.

10 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 49(2)(a).

11 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 49(2)(b) (substituted by SI 2007/1843). As to the obtaining of the European Commission's opinion see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 49(3), (4). Where a competent authority other than the Secretary of State or the Welsh Ministers proposes to agree to a plan or project under reg 49 notwithstanding a negative assessment of the implications for the site concerned, it must notify the Secretary of State or the Welsh Ministers, and having done so, it must not agree to the plan or project before the end of the period of 21 days beginning with the day notified to it by the Secretary of State or the Welsh Ministers as that on which the notification was received by him or them, unless the Secretary of State notifies or the Welsh Ministers notify it that it may do so: reg 49(5) (amended by SI 2007/1843). In any such case the Secretary of State or the Welsh Ministers may give directions to the competent authority prohibiting it from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction; and this power is without prejudice to any other power of the Secretary of State or the Welsh Ministers in relation to the decision in question: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 49(6).

12 In where a plan or project: (1) is undertaken by more than one competent authority; (2) requires the consent, permission or other authorisation of more than one competent authority; or (3) is undertaken by one or more competent authorities and requires the consent, permission or other authorisation of one or more other competent authorities: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 52(1).

13 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 52(4).

14 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 52(3) (amended by SI 2007/1843). As to the meaning of 'functions' see PARA 728 note 6.

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749. Planning.

The effect on a European site in Great Britain or a European offshore marine site¹ must be considered in relation to the granting of planning permission².

The competent authority³ may, if it considers that any adverse effects of the plan or project on the integrity of a European site or European offshore marine site would be avoided if the planning permission were subject to conditions or limitations, grant planning permission or, as the case may be, take action which results in planning permission being granted or deemed to be granted subject to those conditions or limitations⁴.

Subject to certain provisions⁵, the requirement to review certain decisions and consents⁶ applies to planning permission⁷.

Development, permission for which was granted by general development order⁸, which is likely to have a significant effect on a European site in Great Britain or a European offshore marine site and which is not directly connected with or necessary to the management of the site, must not be commenced until the developer has received written notification of the local planning authority's approval⁹.

Where it is intended to carry out development in reliance on the permission granted by a general development order, application may be made in writing to the appropriate nature conservation body¹⁰ for its opinion whether the development is likely to have a significant effect on a European site¹¹. The appropriate nature conservation body must consider whether this is likely¹², and provide a written opinion to the applicant and local planning authority¹³. An opinion that the development is not likely to have such an effect is conclusive of that question for the purpose of reliance on the planning permission granted by a general development order¹⁴. If the appropriate nature conservation body considers that it has insufficient information to reach a conclusion, it must notify the applicant in writing indicating in what respects it considers the information insufficient; and the applicant may supply further information with a view to enabling the body to reach a decision on the application¹⁵.

Planning permission must not be granted in a simplified planning zone¹⁶, enterprise zone¹⁷ or by special development order¹⁸ made or designated: (1) after 30 October 1994 if it is likely to have a significant effect on a European site in Great Britain and is not directly connected with or necessary to the management of the site¹⁹; or (2) after 21 August 2007 if it is likely to have a significant effect on a European offshore marine site and is not directly connected with or necessary to the management of the site²⁰. Planning permission must not be granted in a local development order²¹ made on or after 21 August 2007 if it is likely to have a significant effect on a European site in Great Britain or a European offshore marine site and is not directly connected with or necessary to the management of the site²².

1 As to the meaning of 'European site' see PARA 729 note 7; and as to the meaning of 'offshore marine site' see PARA 728 note 10. As to the meaning of 'Great Britain' see PARA 525 note 14.

2 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 54(1). The text refers to planning permission in relation to:

148 (1) granting planning permission on an application under the Town and Country Planning Act 1990 Pt III (ss 55-106) (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 217 et seq; 466 et seq) (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 54(1)(a));

- 149 (2) granting planning permission on an application under the Town and Country Planning Act 1990 s 293A (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 456) (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 54(1)(aa) (added by SI 2006/1282));
- 150 (3) granting planning permission, or upholding a decision of the 'local planning authority' (ie: except as otherwise provided, any authority having any function as a local planning authority or mineral planning authority under the Town and Country Planning Act 1990 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARAS 28-29): Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(1)) to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the local planning authority), on determining an appeal under the Town and Country Planning Act 1990 s 78 (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 598) in respect of such an application (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 54(1)(b));
- 151 (4) granting planning permission under:
7. (a) the Town and Country Planning Act 1990 s 141(2)(a) (action by Secretary of State in relation to purchase notice: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 610) (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 54(1)(c)(i));
7
8. (b) the Town and Country Planning Act 1990 s 177(1)(a) (powers of Secretary of State on appeal against enforcement notice: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 972) (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 54(1)(c)(ii)); or
8
9. (c) the Town and Country Planning Act 1990 s 196(5) as originally enacted (powers of Secretary of State on reference or appeal as to established use certificate) (repealed) (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 54(1)(c)(iii));
9
- 152 (5) directing under the Town and Country Planning Act 1990 s 90(1), (2), or (2A) (development with government authorisation: see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 238), or under the Pipe-lines Act 1962 s 5(1) (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 584), that planning permission is to be deemed to be granted (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 54(1)(d));
- 153 (6) making, or confirming any of the following orders under the Town and Country Planning Act 1990 s 103 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 549):
10. (a) an order under s 102 (order requiring discontinuance of use or removal of buildings or works: see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 546 et seq), including an order made under s 102 by virtue of s 104 (powers of Secretary of State: see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 546 et seq), which grants planning permission (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 54(1)(e)(i)); or
10
11. (b) an order under the Town and Country Planning Act 1990 Sch 9 para 1 (order requiring discontinuance of mineral working: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 757), including an order made under Sch 9 para 1 by virtue of Sch 9 para 11 (default powers of Secretary of State: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 757), which grants planning permission (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 54(1)(e)(ii));
11
- 154 (7) directing that if an application is made for planning permission it is to be granted where the application is under:
12. (a) the Town and Country Planning Act 1990 s 141(3) (action by Secretary of State in relation to purchase notice: see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 972) (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 54(1)(f)(i)); or
12
13. (b) the Planning (Listed Buildings and Conservation Areas) Act 1990 s 35(5) (action by Secretary of State in relation to listed building purchase notice: see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1143) (Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 54(1)(f)(ii)).
13

The planning considerations which are relevant for development which may affect special protection areas for the purposes of the Wild Birds Directive or special areas of conservation for the purposes of the Habitats Directive apply to development which may affect wetland on the list of wetlands of international importance:

see *Planning Permission: Called-in Application* [1997] JPL 373; and the Ramsar Convention on the Wetlands of International Importance (see PARA 667 note 1). As to the Habitats Directive and the Wild Birds Directive see PARA 728 note 3.

The Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 54-67 are to be construed as one with the Town and Country Planning Act 1990: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 68.

See *R (on the application of Brown) v Secretary of State for Transport* [2004] EWHC 819 (Admin), [2004] Env LR 2, [2004] 1 P & CR 21.

3 As to the meaning of 'competent authority' see PARA 728 note 11.

4 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 54(3) (amended by SI 2007/1843). Outline planning permission must not be granted unless the competent authority is satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site or European offshore marine site could be carried out under the permission, whether before or after obtaining approval of any reserved matters: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 54(4) (amended by SI 2007/1843). As to outline planning permission see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 519 et seq.

5 In certain planning permissions: see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 55.

6 In the requirement to review certain decision and consents under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 50-51 (see PARA 748).

7 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 55-57 (reg 55 amended by SI 1996/525; and the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 56, 57 amended by SI 2007/1843). Provision is made in the regulations for claims for compensation: see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 59 (amended by SI 2009/1307).

8 As to general development orders see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 60-63; and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 252 et seq.

9 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 60(1) (amended by SI 2007/1843). As to the approval of the local planning authority see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 62, 109 (amended by SI 2007/1843). As to general development orders see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 63. Where development had already begun before 30 October 1994, it must not be continued until the developer has received written notification of the local planning authority's approval: see reg 60(2), (3).

10 As to the meaning of 'nature conservation body' see PARA 728 note 5.

11 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 61(1).

12 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 61(2).

13 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 61(3).

14 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 61(5).

15 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 61(4).

16 As to simplified planning zones see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 426 et seq.

17 As to enterprise zones see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1491 et seq.

18 As to special development orders see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 252 et seq.

19 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 64, 65, 66. Supplementary provisions are made relating to compensation: see reg 67.

20 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 64 65A, 66A (reg 64 amended, and regs 65A, 66A added, by SI 2007/1843).

21 As to local development orders see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 419 et seq.

22 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 64A (added by SI 2007/1843).

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750. Highways and roads.

The requirement to consider the effect on a European site in Great Britain or a European offshore marine site¹ applies to the construction or improvement of highways or roads². Deemed planning permission for cycle tracks is of no effect for development which is likely to have a significant effect on a European site and is not directly connected with or necessary to the management of the site, whether or not the development authorised by the permission has been begun³.

1 As to the meaning of 'European site' see PARA 729 note 7; and as to the meaning of 'European offshore marine site' see PARA 728 note 10. As to the meaning of 'Great Britain' see PARA 525 note 14.

2 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 69 (amended by SI 2007/1843). As to highways and roads generally see **HIGHWAYS, STREETS AND BRIDGES**. There may be need for an environmental impact assessment: see **AGRICULTURAL LAND** vol 1 (2008) PARA 638 et seq; **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARAS 7-8; **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 60 et seq.

3 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 70. As to cycle tracks see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 675 et seq.

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751. Electricity generating stations or lines above ground.

The general requirements to consider the effect on a European site in Great Britain or a European offshore marine site¹ apply to consents for generating stations and overhead lines under the Electricity Act 1989 and to the procedure on review². There is provision for compensation for revocation or variation of a consent³.

1 As to the meaning of 'European site' see PARA 729 note 7; and as to the meaning of 'European offshore marine site' see PARA 728 note 10. As to the meaning of 'Great Britain' see PARA 525 note 14.

2 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 71-73 (reg 71 amended by SI 2007/1843). As to electricity generating stations and lines generally see **FUEL AND ENERGY**. There may be need for an environmental impact assessment: see **AGRICULTURAL LAND** vol 1 (2008) PARA 638 et seq; **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARAS 7-8; **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 60 et seq.

3 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 74 (amended by SI 2009/1307).

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752. Pipelines.

The general requirements to consider the effect on a European site in Great Britain or a European offshore marine site¹ apply to authorisations under the Pipe-lines Act 1962 and to the procedure on review². There is provision for compensation for revocation or variation of an authorisation³.

1 As to the meaning of 'European site' see PARA 729 note 7; and as to the meaning of 'European offshore marine site' see PARA 728 note 10. As to the meaning of 'Great Britain' see PARA 525 note 14.

2 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 75-77 (reg 75 amended by SI 2007/1843). As to pipelines generally see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 554 et seq.

3 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 78 (amended by SI 2009/1307).

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753. Transport and works.

The general requirements to consider the effect on a European site in Great Britain or a European offshore marine reserve¹ apply to orders under the Transport and Works Act 1992 and to the procedure on review². There is provision for compensation for revocation or variation of an order³.

1 As to the meaning of 'European site' see PARA 729 note 7; and as to the meaning of 'European offshore marine site' see PARA 728 note 10. As to the meaning of 'Great Britain' see PARA 525 note 14.

2 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 79-81 (reg 79 amended by SI 2007/1843). There may be need for an environmental impact assessment: see **AGRICULTURAL LAND** vol 1 (2008) PARA 638 et seq; **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARAS 7-8; **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 60 et seq.

3 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 82 (amended by SI 2009/1307).

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754. Environmental controls.

The general requirements to consider the effect a European site in Great Britain or a European offshore marine site¹ apply to: (1) the granting of an environmental permit under the Environmental Permitting (England and Wales) Regulations 2007². The general requirements also apply to certain functions under the Water Resources Act 1991³, and the Water Industry Act 1991⁴.

1 As to the meaning of 'European site' see PARA 729 note 7; and as to the meaning of 'European offshore marine site' see PARA 728 note 10. As to the meaning of 'Great Britain' see PARA 525 note 14.

2 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 84A (added by SI 2000/1973; and amended by SI 2007/1843; SI 2007/3538). As to environmental permits under the Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538 see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 46 (2010) PARA 662 et seq.

3 le: (1) the granting of a licence the Water Resources Act 1991 Pt 2 Ch 2 (s 24-72); (2) the making of an order under s 27A (variation of small quantity threshold: see **WATER AND WATERWAYS** vol 100 (2009) PARA 221); (3) the making of regulations under s 33A (power to provide for further exemptions: : see **WATER AND WATERWAYS** vol 100 (2009) PARA 225), where those regulations relate to: (a) a prescribed geographical area; (b) a prescribed source of supply (in the case of an exemption from the restriction on abstraction or the other restrictions imposed by s 24 (see **WATER AND WATERWAYS** vol 100 (2009) PARA 214); or (c) prescribed inland waters (in the case of an exemption from the restriction on impounding works); (4) any consent given by the Environmental Agency that an exemption conferred under s 33A applies to an abstraction or impounding works being carried out; (5) the making of an order under s 73 (power to make ordinary and emergency drought orders: see **WATER AND WATERWAYS** vol 100 (2009) PARA 304) which has the effect of authorising: (a) an abstraction or additional abstraction; or (b) a discharge or additional discharge; (6) the granting of a permit under s 79A (see **WATER AND WATERWAYS** vol 100 (2009) PARA 304); (7) any consent given under s 164 (consents for certain discharges under s 163: see **WATER AND WATERWAYS** vol 101 (2009) PARA 466); (8) the making of an order under s 168 (compulsory works orders: see **WATER AND WATERWAYS** vol 101 (2009) PARA 455): see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 84B (added by SI 2007/1843).

4 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 84B (as added: see note 3). The functions of the Water Industry Act 1991 are any consent given under s 166 (consents for certain discharges under section 165: see **WATER AND WATERWAYS** vol 101 (2009) PARA 466) or the making of an order under s 167 (compulsory works orders: see **WATER AND WATERWAYS** vol 101 (2009) PARA 455): see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 84B.

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755. Powers of drainage authorities.

Where the appropriate nature conservation body¹ or any other person enters into an agreement with a drainage authority² for the doing by that authority of any work on land in a European site³, no limitation imposed by law on the capacity of the drainage authority by virtue of its constitution operates so as to prevent the authority carrying out the agreement⁴.

1 As to the meaning of 'appropriate nature conservation body' see PARA 728 note 5.

2 'Drainage authority' means the Environment Agency or an internal drainage board: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 105(2) (amended by virtue of the Environment Act 1995 Sch 22 para 233(1)). As to the Environment Agency see PARA 528; and **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 68 et seq. As to internal drainage boards see **WATER AND WATERWAYS** vol 101 (2009) PARA 569 et seq.

3 As to the meaning of 'European site' see PARA 729 note 7.

4 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 105(1).

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756. Local inquiries.

A local inquiry may be held by the Secretary of State or the Welsh Ministers¹ for the purposes of the exercise of any of his or their functions² under the Conservation (Natural Habitats etc) Regulations 1994³.

1 As to the Secretary of State and the Welsh Ministers see PARA 519.

2 As to the meaning of 'functions' see PARA 728 note 6.

3 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 107(1). The provisions of the Local Government Act 1972 s 250(2)-(5) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 105) apply in relation to such an inquiry: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 107(2).

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(ii) Conservation of Biodiversity under the Natural Environment and Rural Communities Act 2006

757. Public authority's duty to conserve biodiversity.

Every public authority¹ must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity². The Secretary of State³, as respects England, or the Welsh Ministers, as respects Wales, must publish a list of the living organisms and types of habitat which in his or their opinion are of principal importance for the purpose of conserving biodiversity⁴. The Secretary of State or the Welsh Ministers must take such steps as appear to be reasonably practicable to further the conservation of the living organisms and types of habitat included in any such list⁵.

1 'Public authority' means any of the following: (1) a Minister of the Crown; (2) the Welsh Ministers; (3) a public body (including a government department, a local authority and a local planning authority); (4) a person holding an office (a) under the Crown; (b) created or continued in existence by a public general Act; or (c) the remuneration in respect of which is paid out of money provided by Parliament; or (5) a statutory undertaker: Natural Environment and Rural Communities Act 2006 s 40(4). 'Local authority', for these purposes, means, in relation to England, a county council, a district council, a parish council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly; and in relation to Wales, a county council, a county borough council or a community council: s 40(5). 'Local planning authority' has the same meaning as in the Town and Country Planning Act 1990 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) PARA 28): Natural Environment and Rural Communities Act 2006 s 40(5). 'Statutory undertaker' means a person who is or is deemed to be a statutory undertaker for the purposes of any provision of the Town and Country Planning Act 1990 Pt 11 (ss 262-283) (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) PARA 1009 et seq): Natural Environment and Rural Communities Act 2006 s 40(5). As to the Welsh Ministers see PARA 519.

2 Natural Environment and Rural Communities Act 2006 s 40(1). 'Conserving biodiversity' includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat: s 40(3). In complying with s 40(1), a Minister of the Crown, government department or the Welsh Ministers must in particular have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992: Natural Environment and Rural Communities Act 2006 s 40(2).

3 As to the Secretary of State see PARA 519.

4 Natural Environment and Rural Communities Act 2006 ss 41(1), 42(1). Before publishing any list, the Secretary of State must consult Natural England, and the Welsh Ministers must consult the Countryside Council for Wales, as to the living organisms or types of habitat to be included in the list: ss 41(2), 42(2). As to Natural England and the Countryside Council for Wales see PARAS 523-524. The Secretary of State, in consultation with Natural England, and the Welsh Ministers, in consultation with the Council, must: (1) keep under review any list published under s 40 (ss 41(4)(a), 42(4)(a)); (2) make such revisions of any such list as appear appropriate (ss 41(4)(b), 42(4)(b)); and (3) publish any list so revised as soon as is reasonably practicable after revising it (ss 41(4)(c), 42(4)(c)).

5 Natural Environment and Rural Communities Act 2006 ss 41(3), 42(3).

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(9) COUNTRYSIDE AND ENVIRONMENTAL STEWARDSHIP

758. Power to make regulations for the making of grants.

The appropriate minister¹, with the consent of the Treasury, may by regulations² make provision for and in connection with the making of grants to persons who do, or who undertake to that minister that they will do, anything which in the opinion of the minister is conducive to: (1) the conservation or enhancement of the natural beauty or amenity of the countryside (including its flora and fauna and geological and physiographical features) or of any features of archaeological interest there; or (2) the promotion of the enjoyment of the countryside by the public³.

Such regulations may make different provision for different cases or classes of case or for different areas⁴. They may also provide for grants to be made subject to conditions⁵; and they may confer power on the minister to modify, in any particular case, the conditions to which a grant would otherwise be subject, if he is satisfied that the making of that grant, subject to the conditions as so modified, is consistent with the purposes for which the regulations are made⁶. Provision may be made in the regulations in connection with the recovery of any sums paid by way of grant, or the withholding of any further payments of grant, in cases where the applicant for the grant:

- 435 (a) in making the application, or in furnishing any information in connection with the application, has made a statement which was false or misleading in a material respect⁷;
- 436 (b) has failed to do something which he undertook to do if the grant was made⁸;
or
- 437 (c) is in breach of any condition subject to which the grant was made⁹.

In relation to legislation relating to land in England¹⁰, before making or modifying any regulations made under the above provisions¹¹, the minister must consult Natural England¹²; and the Historic Buildings and Monuments Commission for England¹³.

1 See the Environment Act 1995 s 98(5). For these purposes 'appropriate minister' means, in relation to Wales, the Welsh Ministers, and, in relation to England, the Secretary of State for Environment, Food and Rural Affairs (to whom the function of the former Minister of Agriculture, Fisheries and Food have been transferred): see the Environment Act 1995 s 98(5); and the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568 (amended by SI 2002/2626). As to the Secretary of State and the Welsh Ministers see PARA 519.

2 See the Countryside Stewardship Regulations 2000, SI 2000/3048 (see PARA 759); the Entry Level Agri-Environment Scheme (Pilot) (England) Regulations 2003, SI 2003/838; and the Environmental Stewardship (England) Regulations 2005, SI 2005/621 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 811). The power to make regulations is exercisable by statutory instrument: see the Environment Act 1995 s 98(3).

3 Environment Act 1995 s 98(1).

4 Environment Act 1995 s 98(2)(a).

5 Environment Act 1995 s 98(2)(b).

6 Environment Act 1995 s 98(2)(c).

7 Environment Act 1995 s 98(2)(d)(i).

8 Environment Act 1995 s 98(2)(d)(ii).

9 Environment Act 1995 s 98(2)(d)(iii).

10 Environment Act 1995 s 99(6).

11 See the Environment Act 1995 s 99(1), (3)(b). This consultation provision also applies to: (1) any order under the Agriculture Act 1986 s 18 (orders establishing environmentally sensitive areas: see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 808); (2) any of the following: (a) the Farm Woodlands Premium Scheme 1992, SI 1992/905 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1351); (b) the Habitat (Water Fringe) Regulations 1994, SI 1994/1291 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 810; and **WATER AND WATERWAYS** vol 101 (2009) PARA 679); (c) the Habitat (Former Set-Aside Land) Regulations 1994, SI 1994/1292 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 810); (d) the Habitat (Salt Marsh) Regulations 1994, SI 1994/1293 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 810; and **WATER AND WATERWAYS** vol 101 (2009) PARA 679); (e) the Organic Farming (Aid) Regulations 1994, SI 1994/1721 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 811); (f) the Nitrate Sensitive Areas Regulations 1994, SI 1994/1729 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1309; (g) the Countryside Access Regulations 1994, SI 1994/2349 (see PARA 631); (h) the Moorland (Livestock Extensification) Regulations 1995, SI 1995/904 (amended by SI 1996/2449; SI 1996/3076; and SI 1999/2361); and (3) any other statutory instrument which concerns the management of land and whose primary purpose is the promotion of (a) the conservation or enhancement of the natural beauty or amenity of the countryside (including its flora and fauna and geological and physiographical features) or of any features of archaeological interest there; or (b) the enjoyment of the countryside by the public: Environment Act 1995 s 99(3)(a), (c), (d)(i)(ii), (4)(a)-(h).

12 As to the Natural England see PARA 523.

13 See the Environment Act 1995 s 99(2) (amended by the Natural Environment and Rural Communities Act 2006 Sch 11 para 145). As to the Historic Buildings and Monuments Commission for England see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 803.

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759. Countryside stewardship.

The Countryside Stewardship Scheme¹ provided that where the Secretary of State² was of the opinion that the carrying out³ by an applicant⁴ of any activity in relation to land in which the applicant had an interest⁵, and which was the subject of an application, was conducive to the following specified purposes:

- 438 (1) the conservation or enhancement of the natural beauty or amenity of the countryside (including its flora and fauna and geological and physiographical features) or of any features of archaeological interest there⁶; or
- 439 (2) the promotion of the enjoyment of the countryside by the public⁷,

he could enter into an agreement with the applicant⁸.

In England, the Countryside Stewardship Scheme has been replaced by the Environmental Stewardship Scheme⁹.

1 The Countryside Stewardship Scheme is now closed to new entrants and has been superseded by the Environmental Stewardship Scheme in England: see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 810-811.

2 As to the Secretary of State see PARA 519.

3 'Carrying out', in relation to an activity, includes ensuring it is carried out; and 'carry out' is to be construed accordingly: Countryside Stewardship Regulations 2000, SI 2000/3048, reg 2(1).

4 'Applicant' means a person who has made an application to enter into an agreement with the Secretary of State: Countryside Stewardship Regulations 2000, SI 2000/3048, reg 2(1). 'Agreement' means an agreement, whether made before or after 5 December 2000 (ie the coming into force of the Countryside Stewardship Regulations 2000, SI 2000/3048), which remains in force for a specified term, provides for the activity in question to be carried out in relation to land which is the subject of the agreement and requires the Secretary of State to make payments to the beneficiary in respect of the carrying out of that activity thereon: reg 2(1) (definition substituted by SI 2001/3991).

5 'Interest', in relation to land, means a freehold estate, a leasehold estate, a licence to occupy, or a right to graze common land: Countryside Stewardship Regulations 2000, SI 2000/3048, reg 2(1).

6 Countryside Stewardship Regulations 2000, SI 2000/3048, reg 2(1).

7 Countryside Stewardship Regulations 2000, SI 2000/3048, reg 2(1).

8 Countryside Stewardship Regulations 2000, SI 2000/3048, reg 3(1).

9 As to the Environmental Stewardship Scheme see note 1; PARA 760; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 811. As to access to stewardship land see PARA 632.

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760. Rural development, environmental stewardship and set-aside.

The Common Agricultural Policy¹ makes provision as to the management of set-aside arable land where good agricultural and environmental conditions are applied². Rural development³, as one of the pillars of the Common Agricultural Policy, has led to the introduction of the Environmental Stewardship Scheme for England within the terms of the EC Rural Development Regulation⁴.

1 As to the Common Agricultural Policy see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 701 et seq.

2 As to set-aside arable land see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 787-789.

3 As to rural development see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 790-815.

4 As to the Environmental Stewardship Scheme see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 811. The Environmental Stewardship Scheme has replaced the Countryside Stewardship Scheme: see PARA 759. As to access to stewardship land see PARA 632.

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(10) MANAGEMENT AGREEMENTS/761. Management agreements in relation to land forming part of or adjacent to a European site.

(10) MANAGEMENT AGREEMENTS

761. Management agreements in relation to land forming part of or adjacent to a European site.

The appropriate nature conservation body¹ may enter into a management agreement with every owner, lessee or occupant of land² forming part of a European site³ or adjacent land for the management, conservation, restoration or protection of the site or any part of it⁴. A pre-existing agreement⁵ continues in force as if made under the Conservation (Natural Habitats etc) Regulations 1994⁶.

1 As to the meaning of 'appropriate nature conservation body' see PARA 728 note 5.

2 'Land' includes land covered by water: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(1).

3 As to the meaning of 'European site' see PARA 729 note 7.

4 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 16(1). As to the restrictions that may be imposed by the management agreement as may be expedient for its purposes on the exercise of rights over the land by the persons who can be bound by the agreement see reg 16(2). As to provision by the management agreement for the management of the land, the carrying out on the land of such work and the doing on the land of such other things in such manner as may be expedient for the purposes of the agreement see reg 16(3). As to the rights of enforcement of the management agreement by the appropriate nature conservation body against persons other than the original contracting party see reg 16(4) (amended by SI 2009/1307). As to the powers of limited owners see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 86. As to the making of payments by the appropriate nature conservation body who offers to enter into a management agreement see reg 89 (amended by SI 2007/1843; SI 2009/2438).

5 If made under the National Parks and Access to the Countryside Act 1949 s 16 (see PARA 671) or the Countryside Act 1968 s 15 (see PARA 687): see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 17(1).

6 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 17.

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762. Management and nature reserve agreements made by Natural England.

In relation to England, Natural England¹ may make an agreement (a 'management agreement' or a 'nature reserve agreement'²) with a person who has an interest in land³ about the management or use of the land, if doing so appears to it to further its general purpose⁴.

1 As to Natural England see PARA 523.

2 'Nature reserve agreement' means an agreement under the Natural Environment and Rural Communities Act 2006 s 7 for securing that land which it appears expedient in the national interest should be managed as a nature reserve is so managed: National Parks and Access to the Countryside Act 1949 s 15A(2) (added by the Natural Environment and Rural Communities Act 2006 Sch 11 para 13(1), (4)).

3 For these purposes, 'interest in land' has the same meaning as in the National Parks and Access to the Countryside Act 1949 (see PARA 639 note 4): Natural Environment and Rural Communities Act 2006 s 7(6). As to the meaning of 'land' see PARA 636 note 1.

Tenants for life and certain other limited owners may enter into management agreements: see the Natural Environment and Rural Communities Act 2006 s 7(4); applying the Forestry Act 1967 Sch 2 para 1. As to such agreements see **FORESTRY** vol 52 (2009) PARA 119. As to the phasing out of strict settlements see the Trusts of Land and Appointment of Trustees Act 1996 Sch 1; and **REAL PROPERTY** vol 39(2) (Reissue) PARA 65; **SETTLEMENTS** vol 42 (Reissue) PARA 676.

4 Natural Environment and Rural Communities Act 2006 s 7(1). As to the contents and effect of such agreements see PARA 671. The appropriate authority may enter into an agreement under s 7 as respects an interest in Crown land held by or on behalf of the Crown: s 102(1). 'Appropriate authority', in relation to any land, means: (1) if the land belongs to Her Majesty in right of the Crown, the Crown Estate Commissioners or other government department having the management of the land in question; (2) if the land belongs to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy; (3) if the land belongs to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; (4) if the land belongs to a government department or is held in trust for Her Majesty for the purposes of a government department, that department: s 102(4). As to the Crown Estate Commissioners see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 280 et seq. An agreement under s 7 as respects any other interest in Crown land is of no effect unless approved by the appropriate authority: s 102(2). 'Crown land' means land an interest in which (a) belongs to Her Majesty in right of the Crown; (b) belongs to Her Majesty in right of the Duchy of Lancaster; (c) belongs to the Duchy of Cornwall; or (d) belongs to a government department or is held in trust for Her Majesty for the purposes of a government department: s 102(3). If any question arises under this section as to what authority is the appropriate authority in relation to any land, that question is to be referred to the Treasury, whose decision is final: s 102(5).

Halsbury's Laws of England/OPEN SPACES AND COUNTRYSIDE (VOLUME 78 (2010) 5TH EDITION)/5. NATURE CONSERVATION AND BIODIVERSITY/(10) MANAGEMENT AGREEMENTS/763. Management agreements for the purpose of conserving etc the natural beauty or amenity of land.

763. Management agreements for the purpose of conserving etc the natural beauty or amenity of land.

A relevant authority¹ may², for the purpose of conserving or enhancing the natural beauty³ or amenity of any land which is within its area or promoting its enjoyment by the public, make an agreement (a 'management agreement') with any person having an interest in the land with respect to the management of the land during a specified term or without limitation of the duration of the agreement⁴. An agreement as respects any interest in Crown land, other than an interest held by or on behalf of the Crown, has no effect unless approved by the appropriate authority⁵.

A management agreement may impose on the person having an interest in the land restrictions as respects the method of cultivating the land, its use for agricultural purposes or the exercise of rights over the land and may impose obligations on that person to carry out works or agricultural or forestry operations or do other things on the land⁶. It may confer on the relevant authority power to carry out works for the purpose of performing its functions under the National Parks and Access to the Countryside Act 1949 and the Countryside Act 1968⁷, and may contain such incidental and consequential provisions, including provisions for the making of payments by either party to the other, as appear to the relevant authority to be necessary or expedient for the purposes of the agreement⁸.

The provisions of a management agreement with any person interested in the land are, unless the agreement provides otherwise, binding on persons deriving title under or from that person and are enforceable by the relevant authority against those persons accordingly⁹.

1 A national park authority is a relevant authority for the purposes of the Wildlife and Countryside Act 1981 ss 39, 41, 50 in respect of any land in any national park for which that authority is the local planning authority: Environment Act 1995 s 69(2). As to national park authorities as local planning authorities see PARA 644. As to national park authorities generally see PARA 526. As respects land within the Broads, the relevant authority is the Broads Authority: Wildlife and Countryside Act 1981 s 39(5)(aa) (added by the Norfolk and Suffolk Broads Act 1988 Sch 3 para 31(2)). As to the Broads Authority see PARA 531. As respects any other land, the relevant authority is the local planning authority: Wildlife and Countryside Act 1981 s 39(5)(c). As respects any land in Wales, the relevant authority is the Countryside Council for Wales: s 39(5)(e) (added by the Countryside and Rights of Way Act 2000 s 96(b)). As respects land in any area of outstanding natural beauty designated under the Countryside and Rights of Way Act 2000 s 82 (see PARA 658) for which a conservation board has been established under s 86 (see PARA 660), the relevant authority is that board: Wildlife and Countryside Act 1981 s 39(5)(f) (added by the Countryside and Rights of Way Act 2000 s 96(b)). As to the meaning of 'local planning authority' see PARAS 636 note 12, 644.

2 The powers conferred by these provisions on a relevant authority are in addition to and not in derogation of any power conferred on such an authority by or under any enactment: Wildlife and Countryside Act 1981 s 39(6).

3 References to the conservation of the natural beauty of any land include references to the conservation of its flora, fauna and geological or physiographical features: Wildlife and Countryside Act 1981 s 52(3).

4 Wildlife and Countryside Act 1981 s 39(1) (amended by the Countryside and Rights of Way Act 2000 s 96(a), Sch 16 Pt VI). The Forestry Act 1967 s 5(4), Sch 2 (power for tenant for life and others to enter into forestry dedication covenants) applies to management agreements as it applies to forestry dedication covenants: Wildlife and Countryside Act 1981 s 39(4). As to forestry dedication covenants see **FORESTRY** vol 52 (2009) PARA 116 et seq.

5 Wildlife and Countryside Act 1981 s 67(3). As to the meaning of 'appropriate authority' see PARA 639 note 2 (definition applied by s 67(4)). Subject to this provision, Pt II (ss 27A-52) (except s 51) applies to Crown land, that is to say, land an interest in which belongs to Her Majesty in the right of the Crown or the Duchy of Lancaster or to the Duchy of Cornwall, and land an interest in which belongs to a government department or is held on trust for Her Majesty for the purposes of a government department: s 67(1).

6 Wildlife and Countryside Act 1981 s 39(2)(a).

7 Wildlife and Countryside Act 1981 s 39(2)(b).

8 Wildlife and Countryside Act 1981 s 39(2)(c).

9 Wildlife and Countryside Act 1981 s 39(3).